STATE OF MICHIGAN
ENTERPRISE PROCUREMENT

Department of Technology, Management, and Budget

320 S. Walnut Street 2nd Floor Lansing, MI 48933
P.O. BOX 30026 LANSING, MICHIGAN 48909

CONTRACT CHANGE NOTICE

Change Notice Number **3**
to
Contract Number **MA230000000005**

CONTRACTOR		STATE		
	LCPTRACKER, INC.		Various	Various
	15173 North Rd., Suite 202	Program Manager		
	Fenton MI 48430			
	Matthew Delaney	Contract Administrator	Patrick Russell	DTMB
	810-666-0858		(517) 648-7767	
	mdelaney@lcptracker.com		RussellP2@michigan.gov	
	CV0014984			

CONTRACT SUMMARY

Federal Prevailing Wage & Labor Compliance Software

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
November 1, 2022	October 31, 2027	5 - 12 Months	October 31, 2027

PAYMENT TERMS	DELIVERY TIMEFRAME

ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
☐ P-Card	☐ Direct Voucher (PRC)	☐ Other	☒ Yes	☐ No

MINIMUM DELIVERY REQUIREMENTS

DESCRIPTION OF CHANGE NOTICE

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
☐		☐		

CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE
$710,523.99	$140,000.00	$850,523.99

DESCRIPTION
Effective 04/02/2025, this Contract is increased by $140,000 for Labor and Economic Opportunity (LEO) use. The following Amendment is incorporated into this Contract per attached Statement of Work, including pricing tables, to create a system to collect Certified Payroll and Contractor Registration from contractors working on Prevailing Wage projects with the State of Michigan. Please note the Contract Administrator has changed to Patrick Russell. All other terms, conditions, specifications and pricing remain the same. Per contractor and agency agreement, and DTMB Central Procurement Services approval.

Program Managers

for

Multi-Agency and Statewide Contracts

AGENCY	NAME	PHONE	EMAIL
DTMB	Jeffrey LaBean	517-243-1743	LabeanJ@michigan.gov
MDOT	Lindsey Renner	517-202-5356	RennerL1@michigan.gov
LEO	Andrew Niedzinski		NiedzinskiA@michigan.gov
DTMB	Chris Chittenden		ChittendenC@michigan.gov

FOR THE CONTRACTOR:

LCPTRACKER, INC.
Company Name

Authorized Agent Signature

Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature

Name and Title

DTMB Central Procurement Services
Agency

Date

STATEMENT OF WORK -
IT CHANGE NOTICE

Project Title: Prevailing Wage – Certified Payroll/Contractor Registration	**Period of Coverage:** Starting April 2, 2025
Requesting Department: Labor and Economic Opportunity (LEO)	**Date:** 4/2/2025
Agency Program Manager: Andrew Niedzinski	**Phone:** 517-243-1053
DTMB Program Manager: Chris Chittenden	**Phone:** 517-898-5166

BACKGROUND:

Act 10 of 2023 requires the payment of prevailing wages and fringe benefits on state-funded projects. It establishes requirements for contracting agents and bidders, assigns enforcement responsibilities to state and local government entities, and provides penalties for non-compliance. Amendments to the Act in 2024 (effective April 2, 2025) directs the Department of Labor and Economic Opportunity (LEO) to implement a State Project Registration (SPR) system, collect Certified Payroll records (effective April 2, 2025), and develop a Certified Payroll Database within one year of the act's enactment.

PROJECT OBJECTIVE:

Create a system to collect Certified Payroll and Contractor Registration from contractors working on Prevailing Wage projects with the State of Michigan.

DELIVERABLES:

Deliverables will not be considered complete until the Agency Project Manager has formally accepted them. Deliverables for this project include:

The Solution will meet the following requirements for both Certified Payroll Collection and State Project Registration:

1. Certified Payroll Collection
In effect April 2, 2025: The Solution will allow the department to collect weekly certified payrolls from all contractors on State projects and other contracting agencies covered by the Act. Needs include:
    a. Basic submitter information with unique identifier (such as EIN) for connection with registration.

    b. Database support for housing Certified Payroll Reports and related documents tied to unique identifier.

    c. Data Entry (web form) and upload ability for contractors within the Certifed Payroll Database to house submissions.

    d. Certified Payroll Database has validations which may be set by the Agency as required elements for each Certified Payroll submission to assist in preventing partial submissions.

2. State Project Registration*

    a. Registration process will require:

        i) Name, address, Type of entity (Corp, LLC, etc..), Tax ID, Unemployment Insurance ID, Persons with financial interest.

        ii) Attestation of compliance with "all applicable law," applicable to registering entity (labor law, tax defaults, etc.).

        iii) System creates unique identifier, such as EIN, to tie to payroll submissions.

    b. Accept Payment for Contractor Registration Fee:

        i) Interface with MI Dept. of Treasury payment and/or financial systems (CEPAS, SIGMA)

    c. Upon form and payment confirmation, a successful registration a message will be provided to the register that includes their Reg number.

        i) Department has 15 days to approve or deny. To start, without a connection to database, automated message with some language around reviews, etc.

    *Initially, LEO will manually enter contractor information into Certified Payroll Database and into their invoicing system and send out invoices. However, requirements 2 a, b, and c will be made available by April 2, 2026. The cost and timeline for 2 a, b, and c has yet to be scoped at the time of this SOW. A new SOW will be created for 2 a, b, and c.

PAYMENT SCHEDULE:

LCPtracker Pro - Pricing	Frequency	Service Fee (Year 3 Pricing Below)
Bulk Project Pricing - Annual Access Service Fee		
Capacity: Up to $X million/billion Bulk project Annual Access Service Fee for access to LCPtracker Professional comprising: • Unlimited administrative Users at no cost to Client • Unlimited contractor Users at no cost directly to Client • Administrator phone, email, and Live Chat/FAQ/Chatbot technical software support as needed (not training). • Contractor email and Live Chat/FAQ/Chatbot technical software support as needed (not training).	Annual	To be determined by Construction Capacity (see prices in Bulk Project Pricing Table below)

LCPtracker Pro - Pricing	Frequency	Service Fee (Year 3 Pricing Below)
• Unlimited administrator and registered contractor User access to on-demand, pre-recorded web training videos during the Term. Fixed Annual Multiple Projects Fee Option This is a flat rate annual priced package for a one-year commitment for LCPtracker Professional Services.		

Services	Term	Pricing

Time frame April 15,2025 to October 31,2025
$12 Billion cap is $186,028.94 - $7.5 Billion ($151,813.56) = $34,215.38
$34,215.38/ 12 Months = $2,851.28/ month x 6.5 Months = $18,533.33
1. Certified Payroll Collection
   a. In effect April 2, 2025 (minimum):
     i. The department is to collect weekly certified payrolls from all contractors on State projects and other contracting agencies covered by the Act. Needs include:
      1. Basic submitter information with unique identifier (likely EIN) for connection with registration.
      2. Database support for housing documents tied to unique identifier.
      3. Email or preferably upload potential to connect directly to a database to house submissions.
      4. Required elements to prevent partial submissions.
	6.5 Months	$18,533.33

Standard Start-Up (web based):
Configuration and setup of administrative account/database.
  • 3-4 Implementation sessions comprising Admin #1, Admin #2, contractor training, and Go Live (these may be combined).
  • 1 additional Admin training session, either web-based or in-person (depending on selection).
  • 8 hours of wage data entry for Client. • A single one-hour training session for Client on how to data load prevailing wage data, if needed.
  • *If elect in-person training, travel billed additionally according to cost, unless the flat travel fee detailed below has been elected
 	
Customization of Subcontractor Form (1 hr at $239.52)
	One Time	$6,500.00
		
		$239.52

	Total	**$25,272.85**

Optional Services		
Update Wages Any future wage updates LEO wants loaded by LCPtracker will be entered on the LCPtracker template format with the information LEO provides. By attaching the completed file back to LCPtracker, LEO understands and accepts the following**:** • The client will enter the wage determination information on the Excel file template LCPtracker provided LEO (format will be the same as the initial upload LEO sent to LCPtracker filled out) • LCPtracker will not review information entered by the client prior to upload • Client is to confirm the accuracy of the data upload once completed by LCPtracker Project Management Services are $125/hr and we anticipate that it will take 8 hours to complete work.	Per Wage Entry	$1,000.00

Yearly Pricing 2024-2027**					
Bulk Project Service Fee for Administrator access to the Services **(upon reaching the applicable tier) any year of the Subscription Term**					
Construction Capacity in the relevant yearly period of the Subscription Term	**List Pricing in Year 1**	**Dis-count**	**LCPtracker Professional Annual Access Service Fees Year 3 4/15/24 -4/14/25**	**LCPtracker Professional Annual Access Service Fees Year 4 4/1525 -4/1426**	**LCPtracker Professional Annual Access Service Fees Year 5 4/1526 – 4/1427**
Up to $1 billion	$97,868	21%	$85,240.58	$89,502.61	$93,977.74
Up to $2 billion	$106,464	21%	$92,727.48	$97,363.85	$102,232.05
Up to $3 billion	$115,060	21%	$100,214.38	$102,719.74	$105,225.10
Up to $4 billion	$123,656	21%	$107,701.28	$113,086.35	$118,740.66
Up to $5 billion	$132,252	21%	$115,186.19	$120,947.59	$126,994.97
Up to $5.5 billion	$141,133	21%	$122,923.31	$129,069.48	$135,522.95
Up to $6 billion	$147,660	21%	$128,608.17	$135,038.58	$141,790.51
Up to $6.5 billion	$159,541	21%	$136,343.30	$143,160.46	$150,318.49
Up to $7 billion	$165,422	21%	$144,078.43	$151,282.35	$158,846.47
Up to $7.5billion	$174,303	21%	$151,813.56	$159,404.23	$167,374.44
Up to $8 billion	$179,225	21%	$156,100.49	$163,905.52	$172,100.80
Up to $8.5 billion	$183,512	21%	$159,834.30	$167,826.09	$176,217.32
Up to $9 billion	$187,799	21%	$163,568.23	$171,746.65	$180,333.98
Up to $10 billion	$196,395	21%	$171,055.13	$179,607.89	$188,588.29
Up to $12 billion	$213,587	21%	$186,028.94	$195,330.38	$205,096.90
Up to $14 billion	$230,779	21%	$201,002.74	$211,052.88	$221,605.52
Up to $16 billion	$247,971	21%	$215,976.54	$236,068.73	$247,872.16

Construction Capacity in the relevant yearly period of the Subscription Term	List Pricing in Year 1	Dis-count	LCPtracker Professional Annual Access Service Fees Year 3 4/15/24 -4/14/25	LCPtracker Professional Annual Access Service Fees Year 4 4/1525 -4/1426	LCPtracker Professional Annual Access Service Fees Year 5 4/1526 – 4/1427
Up to $18 billion	$265,163	21%	$230,950.34	$242,497.86	$254,622.75
Up to $20 billion	$282,355	21%	$245,924.15	$258,220.35	$271,131.37
Up to $22 billion	$299,547	21%	$260,897.95	$273,942.85	$287,639.99
Optional Services					
Custom Development (System requests, reports, SOCs, custom data management requests, etc.)	$275.00	21%	$239.52	$251.49	$264.07
Project Management Services	$175.00	21%	$152.42	$160.04	$168.04

**LEO's yearly cost will be calculated using the *Yearly Pricing 2024-2027* table above. Pricing will be calculated in excess of MDOT's Construction Capacity in the relevant yearly period of the Subscription Term. As an example, in 2024-2025, if MDOT's Construction Capacity is $6 Billion and LEO's Construction Capacity is $4 Billion, LEO will pay the difference between the $6 Billion rate of $128,608.17 and the $10 Billion rate of $171,055.13, incurring a cost of $42,446.96.

EXPENSES:

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

PROJECT CONTACTS:

The designated Agency Program Manager is:

Andrew Niedzinski
Department of Labor and Economic Opportunity
Wage and Hour Division
530 W. Allegan
Lansing, MI 48933
517-243-1053
NiedzinskiA@michigan.gov

The designated DTMB Program Manager is:

Chris Chittenden
Department of Technology, Management & Budget
Agency Services
4125 W. St Joseph Hwy
Lansing, MI 48917
517-898-5166
ChittendenC@michigan.gov

LOCATION OF WHERE THE WORK IS TO BE PERFORMED:

Consultants will work at: Remote

EXPECTED CONTRACTOR WORK HOURS AND CONDITIONS:

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

No overtime will be permitted.

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

<u>CONTRACT CHANGE NOTICE</u>

Change Notice Number **2**

to

Contract Number **230000000005**

CONTRACTOR LCPTRACKER, INC.		
15173 North Rd., Suite 202		
Fenton, MI 48430		
Matthew Delaney		
810-666-0858		
mdelaney@lcptracker.com		
CV0014984		

STATE **Program Manager** Various	MDOT
Contract Administrator Robin Lampert	DTMB
(517) 582-2746	
lampertr1@michigan.gov	

CONTRACT SUMMARY

FEDERAL PREVAILING WAGE & LABOR COMPLIANCE SOFTWARE

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
November 1, 2022	October 31, 2027	5 - 1 Year	October 31, 2027

PAYMENT TERMS	DELIVERY TIMEFRAME

ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
☐ P-Card	☐ PRC	☐ Other	☒ Yes	☐ No

MINIMUM DELIVERY REQUIREMENTS

DESCRIPTION OF CHANGE NOTICE

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
☐		☐		October 31, 2027

CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE
$704,677.33	$5,846.66	$710,523.99

DESCRIPTION

Effective 3/1/2023, the Contract is increased by $5,846.66. This amount covers the increases needed to track higher construction levels for Federal and State compliance - now up to the $7.5 billion construction capacity. The annual rate is increased to track current prevailing wage compliance to $137,699.37 in the first year. The amount is pro-rated to cover increases in volume that began in March. It is discounted by 21% for for MDOT use.

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

Program Managers
for
Multi-Agency and Statewide Contracts

AGENCY	NAME	PHONE	EMAIL
DTMB	Jeffrey LaBean	517-243-1743	LabeanJ@michigan.gov
MDOT	Lindsey Renner	517-202-5356	RennerL1@michigan.gov

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

CONTRACT CHANGE NOTICE

Change Notice Number **1**

to

Contract Number **230000000005**

CONTRACTOR		STATE		
LCPTracker, Inc.		Program Manager	various	MDOT
15173 North Rd., Suite 202				
Fenton, MI 48430		Contract Administrator	Robin Lampert	DTMB
Matthew Delaney			(517) 582-2746	
810-666-0858			lampertr1@michigan.gov	
mdelaney@lcptracker.com				
CV0014984				

CONTRACT SUMMARY			
FEDERAL PREVAILING WAGE & LABOR COMPLIANCE SOFTWARE			
INITIAL EFFECTIVE DATE	**INITIAL EXPIRATION DATE**	**INITIAL AVAILABLE OPTIONS**	**EXPIRATION DATE BEFORE**
November 1, 2022	October 31, 2027	5 - 1 Year	October 31, 2027
PAYMENT TERMS		**DELIVERY TIMEFRAME**	

ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
☐ P-Card	☐ PRC	☐ Other	☒ Yes	☐ No

MINIMUM DELIVERY REQUIREMENTS

DESCRIPTION OF CHANGE NOTICE				
OPTION	**LENGTH OF OPTION**	**EXTENSION**	**LENGTH OF EXTENSION**	**REVISED EXP. DATE**
☐		☐		October 31, 2027
CURRENT VALUE	**VALUE OF CHANGE NOTICE**	**ESTIMATED AGGREGATE CONTRACT VALUE**		
$700,000.00	$4,677.33	$704,677.33		

DESCRIPTION
Effective 7/1/2023, the Contract is increased by $4,677.33. The annual rate is increased to $130,683.38 to track current prevailing wage compliance at the $7 Billion level. The amount is pro-rated for four months (July 2023 - October 2023) and discounted by 21% for a total cost of $4,677.33 for MDOT use.   Please note the Contract Administrator for LCPTracker has been changed to Matt Delaney, and the Contract Administrator for the State has been changed to Robin Lampert.   All other terms, conditions, specifications, and pricing remain the same. Per contractor and agency agreement, and DTMB Central Procurement Services approval

STATE OF MICHIGAN PROCUREMENT

Department of Technology Management & Budget

320 South Walnut Street
PO Box 30026
Lansing, MI 48909

NOTICE OF CONTRACT

NOTICE OF CONTRACT NO. **230000000005**
between
THE STATE OF MICHIGAN
and

CONTRACTOR	
LCPTRACKER, INC.	
200 E Chapman Ave	
Orange, CA 92866	
Jeff Douglas	
714-418-5605	
jdouglas@lcptracker.com	
CV0014984	

STATE	Program Manager	Multi	Multi
	Contract Administrator	Christopher Martin	DTMB
		517-643-2833	
		martinc20@michigan.gov	

CONTRACT SUMMARY			
DESCRIPTION: FEDERAL PREVAILING WAGE & LABOR COMPLIANCE SOFTWARE			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
11/1/2022	10/31/2027	5, 1-year	10/31/2027
PAYMENT TERMS		DELIVERY TIMEFRAME	
Net 45			
ALTERNATE PAYMENT OPTIONS		EXTENDED PURCHASING	
☐ P-card ☐ Payment Request (PRC) ☐ Other		☒ Yes	☐ No
MINIMUM DELIVERY REQUIREMENTS			
MISCELLANEOUS INFORMATION			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION			$700,000.00

Program Managers

for
Multi-Agency and Statewide Contracts

AGENCY	NAME	PHONE	EMAIL
DTMB	Jeff LaBean	517-243-1743	labeanj@michigan.gov
MDOT	Lindsey Renner	517-202-5356	rennerl1@michigan.gov

FOR THE CONTRACTOR:

_____

Company Name

_____

Authorized Agent Signature

_____

Authorized Agent (Print or Type)

_____

Date

FOR THE STATE:

_____

Signature

_____

Name & Title

_____

Agency

_____

Date

STATE OF MICHIGAN

SOFTWARE TERMS AND CONDITIONS

These Terms and Conditions, together with all Schedules (including the Statement(s) of Work), Exhibits and any other applicable attachments or addenda (Collectively this "Contract") are agreed to between the State of Michigan (the "**State**") and LCPTracker, Inc ("**Contractor**"), a California Corporation. This Contract is effective on 4/15/2022 ("**Effective Date**"), and unless terminated, will expire on 4/14/2027 (the "**Term**").

This Contract may be renewed for up to five additional one-year periods. 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.

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

    "**Acceptance**" has the meaning set forth in **Section 9**.

    "**Acceptance Tests**" means such tests as may be conducted in accordance with **Section 9.1** and a Statement of Work to determine whether the Software meets the requirements of this Contract and the Documentation.

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

    "**Allegedly Infringing Materials**" has the meaning set forth in **Section 17.2(b)**.

    "**Approved Third Party Components**" means all third party components, including Open-Source Components, that are included in or used in connection with the Software and are specifically identified by Contractor in the Contractor's Bid Response or as part of the State's Security Accreditation Process defined in Schedule E – Data Security Schedule.

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

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

    "**Business Requirements Specification**" means the attached specification setting forth the State's business requirements regarding the features and functionality of the Software, as set forth in a Statement of Work.

    "**Change**" has the meaning set forth in **Section 2.2**.

    "**Change Notice**" has the meaning set forth in **Section 2.2(b)**.

    "**Change Proposal**" has the meaning set forth in **Section 2.2(a)**.

    "**Change Request**" has the meaning set forth in **Section 2.2**.

    "**Confidential Information**" has the meaning set forth in **Section 22.1**.

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

"**Contract**" has the meaning set forth in the preamble.

"**Contract 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 a 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 Solicitation Type.

"**Contractor Hosted**" means the Hosted Services are provided by Contractor or one or more of its Permitted Subcontractors.

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

"**Contractor Project Manager**" means the individual appointed by Contractor and identified in a Statement of Work to serve as the primary contact with regard to services, to monitor and coordinate the day-to-day activities of this Contract, and to perform other duties as may be further defined in this Contract, including an applicable Statement of Work.

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

"**Deliverables**" means the Software, and all other documents and other materials that Contractor is required to or otherwise does provide to the State under this Contract and otherwise in connection with any Services, including all items specifically identified as Deliverables in a Statement of Work. LCPtracker as a SaaS provider is not providing any Work Product, as we are not delivering any specific to State products.

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

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

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

"**Effective Date**" has the meaning set forth in the preamble.

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

"**Financial Audit Period**" has the meaning set forth in **Section 23.1**.

 "**Harmful Code**" means any software, hardware or other technologies, devices or means, the purpose or effect of which is to: (a) permit unauthorized access to, or to destroy, disrupt, disable, encrypt, modify, copy, or otherwise harm or impede in any manner, any (i) computer, software, firmware, data, hardware, system or network, or (ii) any application or function of any of the foregoing or the integrity, use or operation of any data Processed thereby; or (b) prevent the State or any Authorized User from accessing or using the Services as intended by this Contract, and

includes any virus, bug, trojan horse, worm, backdoor or other malicious computer code and any time bomb or drop dead device.

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

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

"**Integration Testing**" has the meaning set forth in **Section 9.2(a)**.

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

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

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

"**Maintenance Release**" means any update, upgrade or other included 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 who are licensing the same product as State, which may contain, among other things, error corrections, enhancements, improvements or other changes to the user interface, functionality, compatibility, capabilities, performance, efficiency or quality of the Software.

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

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

"**New Version**" means any new version of the Software, including any updated Documentation, that the Contractor may from time to time introduce and market generally as a distinct licensed product, as may be indicated by Contractor's designation of a new version number, but only if marketed to clients of the Contractor generally as not subject to an additional charge.

"**Nonconformity**" or "**Nonconformities**" means any failure or failures of the Software to conform to the requirements of this Contract, including any applicable Documentation.

"**Open-Source Components**" means any software component that is subject to any open-source copyright license agreement, including any GNU General Public License or GNU Library or Lesser Public License, or other obligation, restriction or license agreement that substantially conforms to the Open Source Definition as prescribed by

the Open Source Initiative or otherwise may require disclosure or licensing to any third party of any source code with which such software component is used or compiled.

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

"**PAT**" means a document or product accessibility template, including any Information Technology Industry Council Voluntary Product Accessibility Template or VPAT®, that specifies how information and software products, such as websites, applications, software and associated content, conform to WCAG 2.0 Level AA.

"**Permitted Subcontractor**" means any third party hired by Contractor to perform Services for the State under this Contract or have access to State Data.

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

"**Pricing Schedule**" means the schedule attached as **Schedule B.**

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

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

"**RFP**" means the State's request for proposal designed to solicit responses for Services under this Contract.

"**Services**" means any of the services, including but not limited to, Hosted Services, Contractor is required to or otherwise does provide under this Contract.

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

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

"**Software**" means Contractor's software as set forth in a 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.

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

"**Specifications**" means, for the Software, the specifications collectively set forth in the Business Requirements Specification, Technical Specification, Documentation, , if any, for such Software, or elsewhere in a Statement of Work.

"**State**" means the State of Michigan.

"**State Data**" has the meaning set forth in **Section 21.1**.

"**State Hosted**" means the Hosted Services are not provided by Contractor or one or more of its Permitted Subcontractors.

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

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

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

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

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

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

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

"**Term**" has the meaning set forth in the preamble.

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

"**Transition Period**" has the meaning set forth in **Section 16.3**.

"**Transition Responsibilities**" has the meaning set forth in **Section 16.3**.

"**Unauthorized Removal**" has the meaning set forth in **Section 2.5(b)**.

"**Unauthorized Removal Credit**" has the meaning set forth in **Section 2.5(c)**.

"**User Data**" means all data, information and other content of any type and in any format, medium or form, whether audio, visual, digital, screen, GUI or other, that is input, uploaded to, placed into or collected, stored, Processed, generated or output by any device, system or network by or on behalf of the State, including any and all works, inventions, data, analyses and other information and materials resulting from any use of the Software by or on behalf of the State under this Contract, except that User Data does not include the Software or data, information or

content, including any GUI, audio, visual or digital or other display or output, that is generated automatically upon executing the Software without additional user input without the inclusion of user derived Information or additional user input.

"**Warranty Period**" means the ninety (90) calendar-day period commencing on the date of the State's Acceptance of the Software and for which Support Services are provided free of charge.

"**WCAG 2.0 Level AA"** means level AA of the World Wide Web Consortium Web Content Accessibility Guidelines version 2.0.

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

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

2.2   Change Control Process. The State may at any time request in writing (each, a "**Change Request**") changes to a Statement of Work, including changes to the Services and Implementation Plan (each, a "**Change**"). Upon the State's submission of a Change Request, the parties will evaluate and discuss implementing all Changes in accordance with this **Section 2.2**.

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

(i)   a written description of the proposed Changes to any Services or Deliverables;

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

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

(iv) any increase or decrease in Fees resulting from the proposed Changes, which increase or decrease will reflect only the increase or decrease in time and expenses Contractor requires to carry out the Change.

(b)   Within 30 Business Days following the State's receipt of a Change Proposal, the State will by written notice to Contractor, approve, reject, or propose modifications to such Change Proposal. If the State proposes modifications, Contractor must modify and re-deliver the Change Proposal reflecting such modifications, or notify the State of any disagreement, in which event the parties will negotiate in good faith to resolve their disagreement. Upon the State's approval of the Change Proposal or the parties' agreement on all proposed modifications, as the case may be, the parties will execute a written agreement to the Change Proposal ("**Change Notice**"), which Change Notice will be signed by the State's Contract Administrator and will constitute an amendment to a Statement of Work to which it relates; and

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

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

(ii) initiate a Dispute Resolution Procedure; or

(d)   No Change will be effective until the parties have executed a Change Notice. Except as the State may request in its Change Request or otherwise in writing, Contractor must continue to perform its obligations in accordance with a Statement of Work pending negotiation and execution of a Change Notice. Contractor will use its commercially reasonable best efforts to limit any delays or Fee increases from any Change to those necessary to perform the Change in accordance with the applicable Change Notice. Each party is responsible for its own costs and expenses of preparing, evaluating, negotiating, and otherwise processing any Change Request, Change Proposal, and Change Notice.

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

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

2.3   Contractor Personnel.

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

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

(i)   ensure that such Contractor Personnel have the legal right to work in the United States; and

(ii) have performed background checks on those Contractor Personnel in accordance with the requirements of the applicable Statement of Work.

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

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

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

(a)   Contractor Project Manager must:

(i)   have the requisite authority, and necessary skill, experience, and qualifications, to perform in such capacity;

(ii)   be responsible for overall management and supervision of Contractor's performance under this Contract; and

(iii)   be the State's primary point of contact for communications with respect to this Contract, including with respect to giving and receiving all day-to-day approvals and consents.

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

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

(i)   the State requests in writing the removal of Contractor Project Manager;

(ii)   the State consents in writing to any removal requested by Contractor in writing;

(iii)   Contractor Project Manager ceases to be employed by Contractor, whether by resignation, involuntary termination or otherwise.

(d)   Contractor will promptly replace its Contractor Project Manager on the occurrence of any event set forth in **Section 2.4(c)**. Such replacement will be subject to the State's prior written approval.

2.5   Contractor's Key Personnel. **Not applicable.**

2.6   Subcontractors. Contractor must obtain prior written approval of the State, which consent may be given or withheld in the State's sole discretion, before engaging any Permitted Subcontractor to provide Services to the State under this Contract.   Third parties otherwise retained by Contractor to provide Contractor or other clients of contractor with services are not Permitted Subcontractors, and therefore do not require prior approval by the State. Engagement of any subcontractor or Permitted Subcontractor by Contractor does not relieve Contractor of its representations, warranties or obligations under this Contract. Without limiting the foregoing, Contractor will:

(a)   be responsible and liable for the acts and omissions of each such subcontractor (including such Permitted Subcontractor and Permitted Subcontractor's employees who, to the extent providing Services or Deliverables, will be deemed Contractor Personnel) to the same extent as if such acts or omissions were by Contractor or its employees;

(b)   be responsible for all fees and expenses payable to, by or on behalf of each Permitted Subcontractor in connection with this Contract, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments and disability benefits; and

(c)   notify the State of the location of the Permitted Subcontractor and indicate if it is located within the continental United States.

3.   **Notices.** All notices and other communications required or permitted under this Contract must be in writing and will be considered given and received: (a) when verified by written receipt if sent by courier; (b) when actually received if sent by mail without verification of receipt; or (c) when verified by automated receipt or electronic logs if sent by facsimile or email.

If to State:	If to Contractor:
Christopher Martin PO Box 30026 Lansing, MI 48909 martinc20@michigan.gov 517-643-2833	LCPtracker, General Counsel 117 E Chapman Ave Orange, CA 92866 legal@lcptracker.com

4. **Insurance.** Contractor must maintain the minimum insurances identified in the Insurance Schedule attached as **Schedule C**.

5. **Software License**.

5.1 **Perpetual License.** If Contractor is providing the State with a license to use its Software indefinitely, then Contractor hereby grants to the State and its Authorized Users a non-exclusive, royalty-free, perpetual, irrevocable right and license to use the Software and Documentation in accordance with the terms and conditions of this Contract, provided that:

(a) The State is prohibited from reverse engineering or decompiling the Software, making derivative works, modifying, adapting or copying the Software except as is expressly permitted by this Contract or required to be permitted by law;

(b) The State is authorized to make copies of the Software for backup, disaster recovery, and archival purposes;

(c) The State is authorized to make copies of the Software to establish a test environment to conduct Acceptance Testing;

(d) Title to and ownership of the Software shall at all times remain with Contractor and/or it's licensors, as applicable; and

(e) Except as expressly agreed in writing, the State is not permitted to sub-license the use of the Software or any accompanying Documentation.

5.2 **Subscription License.** If the Software is Contractor Hosted and Contractor is providing the State access to use its Software during the Term of the Contract only, then:

(a) Contractor hereby grants to the State, exercisable by and through its Authorized Users, a nonexclusive, royalty-free, irrevocable 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:

(i) access and use the Software for the State's business and governmental purposes, including for Processing State Data;

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

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

(iv) access and use the Software for all such non-production uses and applications as may be necessary or useful for the effective use of the Software hereunder which access and use will be without charge and not included for any purpose in any calculation of the State's or its

Authorized Users' use of the Software, including for purposes of assessing any Fees or other consideration payable to Contractor or determining any excess use of the Software as described in **Section 5.2(c)** below .

(b)   License Restrictions. The State will not: (a) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make the Software available to any third party, except as expressly permitted by this Contract or in any Statement of Work; (b) use or authorize the use of the Software or Documentation in any manner or for any purpose that is unlawful under applicable Law; (c) reverse engineering or decompiling the Software, making derivative works, modifying, adapting or copying the Software except as is expressly permitted by this Contract or required to be permitted by law .

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

5.3   **Certification.** To the extent that a License granted to the State is not unlimited, Contractor may request written certification from the State regarding use of the Software for the sole purpose of verifying compliance with this **Section 5.** Such written certification may occur no more than once in any 24-month period during the Term of the Contract. The State will to respond to any such request within 45 calendar days of receipt. If the State's use is greater than contracted, Contractor may invoice the State for any unlicensed use (and related support) pursuant to the terms of this Contract at the rates set forth in **Schedule B**, and the unpaid license and support fees shall be payable in accordance with the terms of the Contract. Payment under this provision shall be Contractor's sole and exclusive remedy to cure these issues.

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

6.   **Third Party Components**. At least 30 days prior to adding new Third Party Components, Contractor will provide the State with notification information identifying and describing the addition. Throughout the Term, on an annual basis, Contractor will provide updated information identifying and describing any Approved Third Party Components included in the Software.

7.   **Intellectual Property Rights**

7.1   Ownership Rights in Software

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

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

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

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

8. **Software Implementation**.

8.1   Implementation. Contractor continue to, as applicable; configure, integrate, and otherwise provide and make fully operational the Software in accordance with the criteria set forth in a Statement of Work and the Implementation Plan.

8.2   Site Preparation. Not applicable.

9. **Software Acceptance Testing**.

9.1   Acceptance Testing.

(a)   Unless otherwise set forth in an applicable Statement of Work, with respect to integrations or configurations provided by Contractor after the effective date of this Contract, Acceptance Tests will be conducted as set forth in this **Section 9** to ensure the Software conforms to the requirements of this Contract, including the applicable Specifications and Documentation.

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

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

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

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

(a)   Upon delivery and installation of any application programming interfaces, Configuration or Customizations, or any other applicable Work Product, to the Software under a Statement of Work, additional Acceptance Tests will be performed on the modified Software as a whole to ensure full operability, integration, and compatibility among all elements of the Software ("**Integration Testing**"). Integration Testing is subject to all procedural and other terms and conditions set forth in **Section 9.1**, **Section 9.4**, and **Section 9.5**.

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

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

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

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

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

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

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

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

(a)   completion of such Acceptance Tests, in the case of Acceptance Tests conducted by Contractor; or

(b)   receipt of the State's notice under **Section 9.1(a)** or **Section 9.3(c)(i)**, identifying any Non-Conformities.

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

(a)   continue the process set forth in this **Section 9**;

(b)   accept the Software as a nonconforming deliverable, in which case the Fees for such Software will be reduced equitably to reflect the value of the Software as received relative to the value of the Software had it conformed; or

(c)   deem the failure to be a non-curable material breach of this Contract and a Statement of Work and terminate this Contract for cause in accordance with **Section 16.1**.

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

10.   Reserved.

11.   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.

12.   Change of Control. Contractor will notify the State, within 30 days of any public announcement or otherwise once legally permitted to do so, of a change in Contractor's organizational structure or ownership. For purposes of this Contract, a change in control means any of the following:

(a)   a sale for consideration of more than 50% of Contractor's stock (not to included ownership putting shares in trusts);

(b)   a sale of substantially all of Contractor's assets;

(c)   consummation of a merger or consolidation of Contractor with any other entity except an entity that is majority owned by Contractor;

(d)   or the board (or the stockholders) approves a plan of complete liquidation.

A change of control does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes. In the event of a change of control, Contractor must require the successor to assume this Contract and all of its obligations under this Contract.

13.   Invoices and Payment.

13.1   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 Services and Deliverables provided as specified in Statement(s) of Work. Invoices must include an itemized statement of all charges.

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

13.3   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.

13.4   <u>Right of Setoff</u>. 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 as a result of failure to meet service level agreement requirements against any amount payable by the State to Contractor under this Contract.

13.5   <u>Taxes</u>. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services or Deliverables purchased under this Contract are for the State's exclusive use. Notwithstanding the foregoing, all Fees are 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.

13.6   <u>Pricing/Fee Changes</u>. All Pricing set forth in this Contract will not be increased, except as otherwise expressly provided in this Section.

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

14.   Liquidated Damages.

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

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

14.3   The assessment of liquidated damages will not constitute a waiver or release of any other remedy the State may have under this Contract for Contractor's breach of this Contract, including without limitation, the State's right to terminate this Contract for cause under **Section 16.1** and the State will be entitled in its discretion to recover actual damages caused by Contractor's failure to perform its obligations under this Contract. However, the State will reduce such actual damages by the amounts of liquidated damages received for the same events causing the actual damages.

Amounts due the State as liquidated damages up to a maximum of $25,000 may be set off against any Fees payable to Contractor under this Contract, or the State may bill Contractor as a separate item and Contractor will promptly make payments on such bills.

15.   Stop Work Order. The State may suspend any or all activities under the Contract at any time. The State will provide Contractor a written stop work order detailing the suspension. Contractor must comply with the stop work order upon receipt. Within 90 calendar days, or any longer period agreed to by Contractor, the State will either:

(a)   issue a notice authorizing Contractor to resume work, or

(b)   terminate the Contract or delivery order. The State will not pay for Contractor's lost profits, or any additional compensation during a stop work period.

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

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

(a)   The State may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the State:

(i)   endangers the value, integrity, or security of State Systems, State Data, or the State's facilities or personnel;

(ii)   becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; or

(iii)   breaches any of its material duties or obligations under this Contract. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

(b)   If the State terminates this Contract under this **Section 16.1**, the State will issue a termination notice specifying whether Contractor must:

(i)   cease performance immediately. Contractor must submit all invoices for Services accepted by the State within 30 days of the date of termination. Failure to submit an invoice within that timeframe will constitute a waiver by Contractor for any amounts due to Contractor for Services accepted by the State under this Contract, or

(ii)   continue to perform for a specified period. If it is later determined that Contractor was not in breach of this Contract, the termination will be deemed to have been a termination for public interest, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in **Section 16.2**.

(c)   The State will only pay for amounts due to Contractor for Services accepted by the State on or before the date of termination for material breach. Further, Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys' fees, court costs, transition costs, and any costs the State incurs to procure the Services from other sources.. A pro rata refund of fees from the date of termination forward is provided to the State for a material uncured breach termination, and State agrees to a cap of $25,000 in any costs associated with transition and alternate vendor procurement.

16.2   Termination for Public Interest. The State may immediately terminate this Contract in whole or in part, without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must:

(a)   cease performance immediately. Contractor must submit all invoices for Services accepted by the State within 30 days of the date of termination. Failure to submit an invoice within that timeframe will constitute a waiver by Contractor for any amounts due to Contractor for Services accepted by the State under this Contract, or

(b)   continue to perform in accordance with **Section 16.3**. If the State terminates this Contract for public interest, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities to the extent the funds are available.

16.3   Transition Responsibilities.

(a)   Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed 90 calendar days; the "**Transition Period**") at a fee to be agreed between the parties (but not to exceed the current fees contained in Schedule B, Pricing), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract to continue without interruption or adverse effect, and to facilitate the orderly transfer of the Services to the State or its designees. Such transition assistance may include but is not limited to:

(i)   continuing to perform the Services at the established Contract rates;

(ii)   taking all reasonable and necessary measures to transition performance of the work, including all applicable Services to the State or the State's designee;

(iii) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, and comply with **Section 22.5** regarding the return or destruction of State Data at the conclusion of the Transition Period; and

(iv)   preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, the "**Transition Responsibilities**"). The Term of this Contract is automatically extended through the end of the Transition Period.

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

17.   Indemnification

17.1   General Indemnification. Contractor retains all its defenses at law and at equity. Contractor must defend , indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, from and against any and all third party actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification) arising out of any third party claim, to the extent arising out of or relating to:

(a)   any infringement, misappropriation, or other violation of any Intellectual Property Right or other right of any third party ;

(b)   any bodily injury, death, or damage to real or tangible personal property to the extent occurring due to negligent (or more culpable) 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

(c)   any negligent (or more culpable) acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

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

(a)   regular updates on proceeding status;

(b)   participate in the defense of the proceeding if they remain a named party;

(c)   employ its own counsel; and to

(d)   retain control of its defense, at its own cost and reasonable expense, if the State deems necessary. Contractor will not, without the State's prior written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding unless the State is dismissed as a party to the suit. Any litigation activity on behalf of the State or any of its subdivisions, under this **Section 17**, must be coordinated with the Department of Attorney General. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

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

18.   **Infringement Remedies**.

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

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

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

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

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

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

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

18.4　If Contractor directs the State to cease using any Software under **Section 18.3,** the State may terminate this Contract for cause under **Section 16.1**.Unless the claim arose against the Software independently of any of the actions specified below, Contractor will have no liability for any claim of infringement arising solely from:

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

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

19.　Disclaimer of Damages and Limitation of Liability.

19.1　　Disclaimer of Damages. NEITHER PARTY WILL BE LIABLE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS AND LOST BUSINESS OPPORTUNITIES.

19.2　　Limitation of Liability. IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY 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 TWO TIMES THE FEES PAID FOR THE MOST RECENT SINGLE YEAR OF SERVICES UNDER THIS CONTRACT (REFERRED TO HEREIN AS "YEARLY CONTRACT PRICE").

19.3　　Exceptions. Subsections (19.2) (Limitation of Liability) above, will not apply to: (i) Contractor's obligations under this Contract (Loss or Compromise of State Data); and (iii) damages arising from either party's gross negligence or intentional misconduct.

19.4　　In the event of a Loss of State Data, Contractor's aggregate total Liability will be limited to $3,000,000 per data breach event. In the case of an indemnification claim as described in Section 18.2, Contractors total aggregate Liability will be limited to $2,000,000.

19.5　　Non-state employee users may be subject to an End User License Agreement with Contractor.

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

(a)　a criminal Proceeding;

(b)　a parole or probation Proceeding;

(c)　a Proceeding under the Sarbanes-Oxley Act;

(d)　a civil Proceeding involving:

(i)　a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or

(ii)　a governmental or public entity's claim or written allegation of fraud; or

(e)   a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.

21.   **State Data**.

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

(a)   User Data; and

(b)   any other data collected, used, Processed, stored, or generated in connection with the Services, including but not limited to:

(i)   personally identifiable information ("**PII**") collected, used, Processed, stored, or generated as the result of the Services, including, without limitation, any information that identifies an individual, such as an individual's social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother's maiden name, email address, credit card information, or an individual's name in combination with any other of the elements here listed

21.2   State Data is and will remain the sole and exclusive property of the State and all right, title, and interest in the same is reserved by the State.

21.3   Contractor Use of State Data. Contractor is provided a limited license to State Data for the sole and exclusive purpose of providing the Services, including a license to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the Services. Contractor must:

(a)   keep and maintain State Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Contract and applicable law to avoid unauthorized access, use, disclosure, or loss;

(b)   use and disclose State Data solely and exclusively for the purpose of providing the Services, such use and disclosure being in accordance with this Contract, any applicable Statement of Work, and applicable law;

(c)   keep and maintain State Data in the continental United States and

(d)   not use, sell, rent, transfer, distribute, commercially exploit, or otherwise disclose or make available State Data for Contractor's own purposes or for the benefit of anyone other than the State without the State's prior written consent. Contractor's misuse of State Data may violate state or federal laws, including but not limited to MCL 752.795.

21.4   Discovery. Contractor will immediately notify the State upon receipt of any requests which in any way might reasonably require access to State Data or the State's use of the Software and Hosted Services, if applicable. Contractor will notify the State Program Managers or their designees by the fastest means available and also in writing. In no event will Contract provide such notification more than twenty-four (24) hours after Contractor receives the request. Contractor will not respond to subpoenas, service of process, FOIA requests, and other legal requests related to the State without first notifying the State and obtaining the State's prior approval of Contractor's proposed responses, Contractor agrees to provide its completed responses to the State with adequate time for State review, revision and approval.

21.5   Loss or Compromise of Data. In this regard, Contractor maintains all of its defenses at law and at equity. In the event of any act, error or omission, negligence, misconduct, or breach on the part of Contractor that compromises or is suspected to compromise the security, confidentiality, integrity, or availability of State Data or the

physical, technical, administrative, or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality, or integrity of State Data, Contractor must, as applicable:

(a)   notify the State as soon as practicable but no later than 24 hours of becoming aware of such occurrence and will provide a report within 72 hours;

(b)   reasonably 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 reasonably required by the State;

(c)   Cover any costs of the State in notifying the affected individuals;

(d)   in the case of PII, cover the costs to the State for the provision of third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no less than 24 months following the date of notification to such individuals;

(e)   perform or take any other actions required to comply with applicable law as a result of the occurrence;

(f)   pay for any reasonable costs associated with the occurrence, including but not limited to any costs incurred by the State in investigating and resolving the occurrence, including reasonable attorney's fees associated with such investigation and resolution;

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

(h)   be responsible for recreating lost State Data in the manner and on the schedule set by the State without charge to the State; and

(i)   provide to the State a detailed plan within 10 calendar days of the occurrence describing the measures Contractor will undertake to prevent a future occurrence.

The parties agree that any damages relating to a breach of **Section 21.6** are to be considered direct damages and not consequential damages. **Section 21** survives termination or expiration of this Contract.

22.   Non-Disclosure of Confidential Information. The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. This **Section 22** survives termination or expiration of this Contract.

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

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

(a)   the subcontractor is a Permitted Subcontractor;

(b)   the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Permitted Subcontractor's responsibilities; and

(c)   Contractor obligates the Permitted Subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any of the Contractor's and Permitted Subcontractor's Representatives may be required to execute a separate agreement to be bound by the provisions of this **Section 22.2**.

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

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

22.5   Surrender of Confidential Information upon Termination. Upon termination or expiration of this Contract or a Statement of Work, in whole or in part, each party must, within 5 Business Days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control. Upon confirmation from the State, of receipt of all data, Contractor must permanently sanitize or destroy the State's Confidential Information, including State Data, from all media including backups using National Security Agency ("NSA") and/or National Institute of Standards and Technology ("NIST") (NIST Guide for Media Sanitization 800-88) data sanitation methods or as otherwise instructed by the State. If the State determines that the return of any Confidential Information is not feasible or necessary, Contractor must destroy the Confidential Information as specified above. The Contractor must certify the destruction of Confidential Information (including State Data) in writing within 5 Business Days from the date of confirmation from the State. Any Confidential Information not possible to be deleted due to it remaining in Contractor backups will be deleted within six months of the termination, during which time all obligations regarding confidentiality will endure.

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

23.1   Right of Audit. Pursuant to MCL 18.1470, the State or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain and provide to the State or its designee and the auditor general upon request, all financial and accounting records related to this Contract through the Term of this Contract and for 4 years after the latter of termination, expiration, or final payment under this Contract or any extension ("**Financial**

Audit Period"). If an audit, litigation, or other action involving the records is initiated before the end of the Financial Audit Period, Contractor must retain the records until all issues are resolved.

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

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

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

(a)   Free of charge during the Warranty Period.

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

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

26.   **Training**. Contractor will provide, as provided in Schedule B, Pricing, training on all uses of the Software permitted hereunder in accordance with the times, locations and other terms set forth in a Statement of Work. Upon the State's request, Contractor will timely provide training for additional Authorized Users or other additional training on all uses of the Software for which the State requests such training, at such reasonable times and locations and pursuant to such rates and other terms as are set forth in the Pricing Schedule.

27.   **Maintenance Releases; New Versions**

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

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

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

28.   **Reserved.**

29. **Contractor Representations and Warranties**.

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

(a)   It is duly organized, validly existing, and in good standing as a corporation or other entity as represented under this Contract under the laws and regulations of its jurisdiction of incorporation, organization, or chartering;

(b)   It has the full right, power, and authority to enter into this Contract, to grant the rights and licenses granted under this Contract, and to perform its contractual obligations;

(c)   The execution of this Contract by its Representative has been duly authorized by all necessary organizational action; and

(d)   When executed and delivered by Contractor, this Contract will constitute the legal, valid, and binding obligation of Contractor, enforceable against Contractor in accordance with its terms.

(e)   Contractor is neither currently engaged in nor will engage in the boycott of a person based in or doing business with a strategic partner as described in 22 USC 8601 to 8606.

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

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

(b)   All written information furnished to the State by or for Contractor in connection with this Contract, including Contractor's Bid Response, is true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make the information not misleading;

(c)   Contractor is not in material default or breach of any other contract or agreement that it may have with the State or any of its departments, commissions, boards, or agencies. Contractor further represents and warrants that it has not been a party to any contract with the State or any of its departments that was terminated by the State within the previous 5 years for the reason that Contractor failed to perform or otherwise breached an obligation of the contract; and

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

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

(a)   it is the legal and beneficial owner of the entire right, title and interest in and to the Software, including all Intellectual Property Rights relating thereto;

(b)   it has, and throughout the license term, will retain the unconditional and irrevocable right, power and authority to grant and perform the license hereunder;

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

(d)   the Software, and the State's use thereof, is and throughout the license term will be free and clear of all encumbrances, liens and security interests of any kind;

(e)   neither its grant of the license, nor its performance under this Contract does or to its knowledge will at any time:

(i)   conflict with or violate any applicable law;

(ii)   require the consent, approval or authorization of any governmental or regulatory authority or other third party; or

(iii) require the provision of any payment or other consideration to any third party;

(f)   when used by the State or any Authorized User in accordance with this Contract and the Documentation, the Software, the Hosted Services, if applicable, or Documentation as delivered or installed by Contractor does not or will not:

(i)   infringe, misappropriate, or otherwise violate any Intellectual Property Right or other right of any third party; or

(ii)   fail to comply with any applicable law;

(g)   as provided by Contractor, the Software and Services do not and will not at any time during the Term contain any:

(i)   Harmful Code; or

(ii)   Third party or Open-Source Components that operate in such a way that it is developed or compiled with or linked to any third party or Open-Source Components, other than Approved Third Party Components specifically described in a Statement of Work.

(h)   all Documentation is and will be complete and accurate in all material respects when provided to the State such that at no time during the license term will the Software have any material undocumented feature; and

(i)   it will perform all Services in a timely, skillful, professional and workmanlike manner in accordance with commercially reasonable industry standards and practices for similar services, using personnel with the requisite skill, experience and qualifications, and will devote adequate resources to meet its obligations under this Contract.

(j)   when used in the Operating Environment (or any successor thereto) in accordance with the Documentation, all Software as provided by Contractor, will be fully operable, meet all applicable specifications, and function in all respects, in conformity with this Contract and the Documentation;

(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;

(l)   no Maintenance Release or New Version, when properly installed in accordance with this Contract, will have a material adverse effect on the functionality or operability of the Software.

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

(n)   If Contractor Hosted:

    (i)   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;

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

    (iii)   all Specifications are, and will be continually updated and maintained so that they continue to be, current, complete and accurate and so that they do and will continue to fully describe the 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;

(o)   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 Software or with the Hosted Services, if applicable, will apply solely to Contractor or its Permitted Subcontractors. Regardless of anything to the contrary contained in any third-party software license agreement or end user license agreement, third-party software providers will have no audit rights whatsoever against State Systems or networks.

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

30.   Offers of Employment. During the first 12 months of the Contract, should Contractor hire an employee of the State, without prior written consent of the State, who has substantially worked on any project covered by this Contract. The Contractor will be billed for 50% of the employee's annual salary in effect at the time of separation.

31.   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 Permitted Subcontractor that provides Services and Deliverables in connection with this Contract.

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

33.   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 the Contract.

34.   Unfair Labor Practice. Under MCL 423.324, the State may void any Contract with a Contractor or Permitted Subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.

35.   Governing Law. This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in the Michigan Court of Claims. Complaints against the State must be initiated in Ingham County, Michigan. Contractor waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint an agent in Michigan to receive service of process.

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

37.   Force Majeure

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

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

     37.3   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 Hosted Services 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 Hosted Services; or

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

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

38.   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. 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.

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

40.   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.

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

42.   Survival. The provisions of this Contract that impose continuing obligations, including but not limited to warranties and representations, termination, transition, insurance coverage, indemnification, state data, disclaimer of damages and limitations of liability, data security and confidentiality, and any right, obligation or condition that, by its express terms or nature and context is intended to survive will survive the expiration or termination of this Contract.

43.   Administrative Fee and Reporting Contractor must pay an administrative fee of 1% on all payments made to Contractor under the Contract including transactions with MiDEAL members, and other states (including governmental subdivisions and authorized entities). Administrative fee payments must be made online by check or credit card at: https://www.thepayplace.com/mi/dtmb/adminfee

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.

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

44.   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.

Upon written agreement between the State and Contractor, this contract may also be extended to: (a) other states (including governmental subdivisions and authorized entities) and (b) State of Michigan employees.

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.

45.   Contract Modification. This Contract may not be amended except by signed agreement between the parties (a "**Contract Change Notice**"). Notwithstanding the foregoing, no subsequent Statement of Work or Contract Change Notice executed after the Effective Date will be construed to amend this Contract unless it specifically states its intent to do so and cites the section or sections amended.

46. **HIPAA Compliance**. Intentionally Deleted.

47. **Accessibility Requirements**.

47.1   All Software provided by Contractor under this Contract, including associated content and documentation, must conform to WCAG 2.0 Level AA. Contractor must provide a description of conformance with WCAG 2.0 Level AA specifications by providing a completed PAT for each product provided under the Contract. At a minimum, Contractor must comply with the WCAG 2.0 Level AA conformance claims it made to the State, including the level of conformance provided in any PAT. Throughout the Term of the Contract, Contractor must:

(a)   maintain compliance with WCAG 2.0 Level AA and meet or exceed the level of conformance provided in its written materials, including the level of conformance provided in each PAT;

(b)   comply with plans and timelines approved by the State to achieve conformance in the event of any deficiencies;

(c)   ensure that no Maintenance Release, New Version, update or patch, when properly installed in accordance with this Contract, will have any adverse effect on the conformance of Contractor's Software to WCAG 2.0 Level AA;

(d)   promptly respond to and resolve any complaint the State receives regarding accessibility of Contractor's Software;

(e)   upon the State's written request, provide evidence of compliance with this Section by delivering to the State Contractor's most current PAT for each product provided under the Contract; and

(f)   participate in the State of Michigan Digital Standards Review described below.

State of Michigan Digital Standards Review. Contractor must assist the State, at no additional cost, with development, completion, and on-going maintenance of an accessibility plan, which requires Contractor, upon request from the State, to submit evidence to the State to validate Contractor's accessibility and compliance with WCAG 2.0 Level AA. Prior to the solution going-live and thereafter on an annual basis, or as otherwise required by the State, re-assessment of accessibility may be required. At no additional cost, Contractor must remediate all issues identified from any assessment of accessibility pursuant to plans and timelines that are approved in writing by the State.

47.2   Warranty. Contractor warrants that all WCAG 2.0 Level AA conformance claims made by Contractor pursuant to this Contract, including all information provided in any PAT Contractor provides to the State, are true and correct. If the State determines such conformance claims provided by the Contractor represent a higher level of conformance than what is actually provided to the State, Contractor will, at its sole cost and expense, promptly remediate its Software to align with Contractor's stated WCAG 2.0 Level AA conformance claims in accordance with plans and timelines that are approved in writing by the State. If Contractor is unable to resolve such issues in a manner acceptable to the State, in addition to all other remedies available to the State, the State may terminate this Contract for cause under **Section 16.1**.

47.3   Contractor must, without limiting Contractor's obligations of indemnification as further described in this Contract, indemnify, defend, and hold harmless the State for any and all claims, including reasonable attorneys' fees, costs, and incidental expenses, which may be suffered by, accrued against, charged to, or recoverable from the State arising out of its failure to comply with the foregoing accessibility standards

47.4   Failure to comply with the requirements in this **Section 47** shall constitute a material breach of this Contract.

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

49.   Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Contract is to be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party has authority to contract for nor bind the other party in any manner whatsoever.

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

51.   No Third-party Beneficiaries. This Contract is for the sole benefit of the parties and their respective successors and permitted assigns. Nothing herein, express or implied, is intended to or will confer on any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Contract.

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

48.   Effect of Contractor Bankruptcy. All rights and licenses granted by Contractor under this Contract are and will be deemed to be rights and licenses to "intellectual property," and all Software and Deliverables are and will be deemed to be "embodiments" of "intellectual property," for purposes of, and as such terms are used in and interpreted under, Section 365(n) of the United States Bankruptcy Code (the "**Code**"). If Contractor or its estate becomes subject to any bankruptcy or similar proceeding, the State retains and has the right to fully exercise all rights, licenses, elections, and protections under this Contract, the Code and all other applicable bankruptcy, insolvency, and similar laws with respect to all Software and other Deliverables. Without limiting the generality of the foregoing, Contractor acknowledges and agrees that, if Contractor or its estate will become subject to any bankruptcy or similar proceeding all rights and licenses granted to the State under this Contract will continue subject to the terms and conditions of this Contract, and will not be affected, even by Contractor's rejection of this Contract.

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

Schedule A	Statement of Work
Schedule B	Pricing Schedule
Schedule C	Insurance Schedule
Schedule D	Service Level Agreement
Schedule E	Data Security Requirements
Schedule F	Disaster Recovery Plan (if Contractor Hosted)
Schedule G	Transition Plan

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

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

SCHEDULE A - STATEMENT OF WORK

1.   DEFINITIONS

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

Term	Definition
DTMB	Department of Technology, Management, and Budget
MDOT	Michigan Department of Transportation
SOM	State of Michigan

2.   BACKGROUND

MDOT's Prevailing Wage and Labor Compliance (PWLC) Program is responsible for monitoring and enforcing compliance with Federal prevailing wage regulations. Federal prevailing wage requirements are included in the Davis Bacon and Related Acts, some of which are set forth in Title 29 of the Code of Federal Regulations (CFRs), Parts 1, 3 and 5. The requirements of these CFRs along with other federal regulations are included in FHWA 1273, which sets forth the Required Contract Provisions for federal aid construction contracts. FHWA 1273 is included in all MDOT let federal aid contracts.

PURPOSE

The State is seeking a *Contractor Hosted* Software Solution and applicable Services

3.   IT ENVIRONMENT RESPOSIBILITIES

> Contractor must describe how identified components will maintain compliance with requirements in the **SCHEDULE E - Data Security Requirements**.

For a Contractor Hosted Software Solution:

Definitions:

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

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

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

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

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

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

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

Component Matrix	Identify contract components with contractor or subcontractor name(s), if applicable
Facilities	
Infrastructure	
Platform	
Application	
Storage	
Backup	
Development	

Contractor must identify any subcontractor(s) that it intends to use for the components in the table above.

Please provide additional information if this matrix above does not adequately identify the division of responsibilities.

4.   ADA COMPLIANCE

The State is required to comply with the Americans with Disabilities Act of 1990 (ADA) and has adopted standards and procedures regarding accessibility requirements for websites and software applications. All websites, applications, software, and associated content and documentation provided by the Contractor as part of the Solution must comply with Level AA of the World Wide Web Consortium (W3C) Web Content Accessibility Guidelines (WCAG) 2.0.

Contractor must provide a description of conformance with WCAG 2.0 Level AA specifications by providing a completed PAT for the Solution. If the Solution is comprised of multiple products, a PAT must be provided for each product. In addition to PATs, Contractor may include a verification of conformance certified by an industry-recognized third-party. If the Contractor is including any third-party products in the Solution, Contractor must obtain and provide the third-party PATs as well.

Each PAT must state exactly how the product meets the specifications. All "Not Applicable" (N/A) responses must be fully explained. Contractor must address each standard individually and with specificity; and clarify whether conformance is achieved throughout the entire product (for example – user functionality, administrator functionality, and reporting), or only in limited areas. A description of the evaluation methods used to support WCAG 2.0 Level AA conformance claims, including, if applicable, any third-party testing, must be provided. For each product that does not fully conform to WCAG 2.0 Level AA, Contractor must provide detailed information regarding the plan to achieve conformance, including timelines.

Contractor must provide details of how they will meet these requirements.

5.   USER TYPE AND CAPACITY

Type of User	Access Type	Number of Users	Number of Concurrent Users

State Employee	R/W/A	45	30
Approved Third Party - Contractors	R/W	800	200

Contractor Solution must meet the expected number of concurrent Users.

> Contractor must explain how it will be able to support the expected number of concurrent Users. Contractor must also explain whether the Solution can scale up or down without affecting performance.

> Contractor must provide details regarding latency response time for (i.e., Generate Page Load, standardized reporting, ad hoc reporting). The Contractor must identify what network connectivity or equipment will the State be required to have to meet the expected latency response time?

6.   ACCESS CONTROL AND AUTHENTICATION

No later than 90 days from the effective date of this Contract, Contractor's solution must integrate with the State's IT Identity and Access Management (IAM) environment as described in the State of Michigan Digital Strategy **1340.00.020.08 Enterprise Identity and Access Management Services Standard (michigan.gov)** for a fee to be agreed between the parties, which consist of:

6.1 MILogin/Michigan Identity, Credential, and Access Management (MICAM). An enterprise single sign-on and identity management solution based on IBM's Identity and Access Management products including, IBM Security Identity Manager (ISIM), IBM Security Access Manager for Web (ISAM), IBM Tivoli Federated Identity Manager (TFIM), IBM Security Access Manager for Mobile (ISAMM), and IBM DataPower, which enables the State to establish, manage, and authenticate user identities for the State's Information Technology (IT) systems.

6.2 MILogin Identity Federation. Allows federated single sign-on (SSO) for business partners, as well as citizen-based applications.

6.3 MILogin Multi Factor Authentication (MFA, based on system data classification requirements). Required for those applications where data classification is Confidential and Restricted as defined by the 1340.00 Michigan Information Technology Information Security Policy (i.e. the proposed solution must comply with PHI, PCI, CJIS, IRS, and other standards).

6.4 MILogin Identity Proofing Services (based on system data classification requirements). A system that verifies individual's identities before the State allows access to its IT system. This service is based on "life history" or transaction information aggregated from public and proprietary data sources. A leading credit bureau provides this service.

To integrate with the SOM MILogin solution, the Contractor's solution must support SAML, or OAuth or OpenID interfaces for the SSO purposes.

7.   DATA RETENTION AND REMOVAL

The State will need to retain all data for the entire length of the Contract unless otherwise directed by the State.

The State will need the ability to delete data, even data that may be stored off-line or in backups.

8. END USER AND IT OPERATING ENVIRONMENT

Contractor must accommodate the latest browser versions (which as of the date of this Agreement are Chrome, Safari, Edge, Firefox) as well as some pre-existing browsers. To ensure that users with older browsers are still able to access online services, applications must, at a minimum, display and function correctly in standards-compliant browsers and the state standard browser without the use of special plugins or extensions. The rules used to base the minimum browser requirements include:

• Over 2% of desktop and mobile & tablet site traffic, measured using Michigan.gov sessions statistics and
• The current browser identified and approved as the State of Michigan standard

This information can be found at https://www.michigan.gov/browserstats. Please use the most recent calendar quarter to determine browser statistics. For those desktop and mobile & tablet browsers with over 2% of site traffic, except Internet Explorer which requires support for at minimum version 11, the current browser version as well as the previous two major versions must be supported.

Contractor must support the current and future State standard environment at no additional cost to the State.

Upgrades may be noticed to clients via our status page online at lcptracker.com/status. Additionally, if a client as a custom request, it can submit the request to the Contractor Account Manager, who will then submit a PDR to the development team, who in turn will revert to Contractor Account Manager with an estimate of costs.

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

Contractor must provide a list of any third party components, and open source component included with or used in connection with the deliverables defined within this Contract. Disclosure within the Product will be provided. This information must be provided to the State on a quarterly basis and/or if a new third party or open source component is used in the performance of this Contract.

Look and Feel Standards
All software items provided by the Contractor must adhere to the State of Michigan Application/Site standards which can be found at https://www.michigan.gov/standards with best efforts.

Mobile Responsiveness
Currently the SaaS solution is not generally designed for optimal performance on a mobile device. This is something that Contractor continues to work on internally, however covenants and warranties cannot be given in this respect.

Specific Services Included:

- System configurability for Federal, State and Local prevailing wage/labor compliance rules
- Contractors use eSignature technology
- Over 60 automatic validations of prevailing wage compliance regulations
- System contains a prevailing wage database in which administrators can enter/edit prevailing wage information and appropriate wage decisions may be applied to each project
- System checks incoming payrolls against this database for potential errors
- Over 80 standard reports including:

    a. Certified Payroll Reports, Project Summary reports

    b. Late Report, Local Hire Reports, Workforce Summary Reports

    c. Apprentice Reports, including Apprentice to Journeymen Ratios, Management List Reports
    d. FHWA Reports, Holiday Report, and many more.

e. Robust, secure and scalable architecture hosted by Microsoft Azure

Electronic documents feature which allows the administrator to collect, monitor and catalog electronic documents Fringe benefit statements, apprentice certifications, SF1444, etc.

- Interfaces with many, industry leading accounting systems such as Paychex, , Paycom, Construction Partner, ADP Workforce Now, Viewpoint, etc.

- Spread sheet or PDF upload compatible
- Administrators may accept/reject payrolls and track responses to and from the contractors
- Federal databases can collect SSNs and addresses of employees, but do not have to display them on the CPRs
- Ad-hoc reporting capabilities
- LCPtracker's training program for administrators and contractors alike includes, web-hosted sessions, online weekly classes, user manuals, and numerous eTraining videos and support documents.
- Multi-tiered security and access rights for staff
- 24/7 availability of system with a guaranteed 99.5% up time
- All upgrades and maintenance performed routinely

ADDITIONAL MODULES TO BE DELIVERED:
Along with the items listed above, the Contractor will provide the required, two key modules: the Davis-Bacon/prevailing wage module and the eDocuments module. These modules work together to provide a web-based program to capture, check, and report on Certified Payroll Reports as well as other related data and reporting. The eDocuments element is an additional function which enhances the posting and collection of documentation required by the MDOT Program.

DAVIS-BACON/PREVAILING WAGE MODULE
The prevailing wage module allows for the storage and maintenance of all Davis Bacon wage decisions and/or prevailing wage decisions required for all MDOT projects. The software has the ability to handle multi-funded projects and the system automatically helps to make sure all contractors and subcontractors are paying the higher of the two.

DOCUMENT MODULE
Contractor's "eDocuments" allows the administrator, to create standard document submittals that are electronically uploaded by contractors. Many types of files or documents can be tracked in the labor compliance database, and many of them are integrated with workflows within the other modules. This allows for a much "greener" environment as the need for paper documentation is eliminated.

This SaaS solution is provided on an annual subscription basis based upon the volume of contracts being monitored. Refer to Schedule B – Pricing for details.

LCPtracker can be accessed on the browser of any mobile device that has an internet access.

Contractor must provide a detailed description of the Solution to be provided under the resulting Contract including, but not limited to, a detailed description of the proposed Software (name, type, version, release number, etc.), its functionality, optional add-on modules and plugins, Contractor's services and the Solution ability to be rapidly configured or scaled as the State's business or technical demands change

10. INTEGRATION

Contractor must integrate their solution to the following technologies:

Current Technology	MILogin – see Statement of Work, Section 6
Volume of Data	**N/A**
Format of the input & export files	**N/A**

11. MIGRATION

No data migration services are necessary, as all data is currently stored within the solution.

12. TRAINING SERVICES

The Contractor must provide administration and end-user training for transition to customer self-sufficiency. Training to include on-demand, pre-recorded video training sessions, user manuals, and support documents.

Contractor staff may conduct training sessions for all MDOT regional staff, its Contractors, and Subcontractors as requested, and for a fee as set forth in Schedule B, in a web-based format. Onsite training is also available. MDOT staff, Contractors, and Subcontractors shall have access to all training materials such as user manuals, online training videos, quick reference sheets, and other tutorials.

Contractor's training program for administrators and contractors contains a variety of training tools available to users to allow them to increase their proficiency in utilizing the system. There is no additional cost associated with using these training methods.
These tools include:

- Self-led video training
- Self-led training document review
- Administrator & contractor instruction manuals and quick start guides
  Video tutorials throughout the software

Self-led video training consists of a series of eTraining videos that a user may view at his leisure. Once a user receives a user id and password from Contractor, user may login to view one of several training videos posted on our on-demand, video training link. Videos include topics such as: Administrator Overview, Administrator Reports, Contractor Overview, etc.

13. TRANSITION RESPONSIBILITIES

Contractor must provide a detailed transition-in and transition-out plan in Schedule G – Transition In and Out Plan, including any roles or responsibilities expected of the State.

14. DOCUMENTATION

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

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

- All training manuals, training plans and other documentation provided should be made availablein an electronic format.

- Contractor must provide user interface and user experience documentation to aid the State in understanding the workflow available in the proposed solution.

- The Contractor must provide documentation to accompany the software solution. Five types of documentation are required:

- End user documentation
- End user online help
- System administrator documentation
- System documentation
- Technical documentation
-
- The Contractor must provide the documentation listed below in an electronic format. Documentation updates due to upgrades or other modifications to the system must be provided throughout the term of the contract and any maintenance period while the license is active. The Contractor must notify the State of any discrepancies or errors in the documentation promptly upon identification.

- Documentation to be provided must include, at a minimum:
- End user documentation
- End user online help
- System administration documentation
  - Special requirements such as browser components that could affect capabilities or performance of the system
- Technical documentation
  - System administrator and contractor manuals
  - FAQ or support information for frequent issues users may encounter
  - Detailed list of client browsers supported by the application

15. ADDITIONAL PRODUCTS AND SERVICES

16. CONTRACTOR PERSONNEL

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

Contractor
Name: Kris Vincil **Address:** 101 N. Alloy, Fenton, MI 48430 **Phone:** 810-279-2946 **Email:** kvincil@lcptracker.com

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

Contractor
Name: Jules Panopoulos **Address:** 117 E Chapman Avenue Orange, CA, 92866 **Phone:** 917 617 0390 **Email:** jpanopoulos@lcptracker.com

Contractor Project Manager. Contractor resource who is responsible to serve as the primary contact with regard to services who will have the authority to act on behalf of the Contractor in matters pertaining to the implementation services, matters pertaining to the receipt and processing of Support Requests and the Support Services.

Contractor
Name: Aliecia Taormina **Address:** 101 N. Alloy, Fenton, MI 48430 **Phone:** 810-309-9404 **Email:** ataormina@lcptracker.com

17. RESERVED

18. CONTRACTOR PERSONNEL REQUIREMENTS

Background Checks. Contractor must present certifications evidencing satisfactory (at sole discretion of the State) background checks, ICHAT, and drug tests for all staff identified for assignment to this project.

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

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

Offshore Resources. Offshore resources are not allowed for this project.

Disclosure of Subcontractors. If the Contractor intends to utilize subcontractors to work directly on a request from State, the Contractor must disclose the following:
- The legal business name; address; telephone number; a description of subcontractor's organization and the services it will provide; and information concerning subcontractor's ability to provide the Contract Activities.
- The relationship of the subcontractor to the Contractor.
- Whether the Contractor has a previous working experience with the subcontractor. If yes, provide details of that previous relationship.
- A complete description of the Contract Activities that will be performed or provided by the subcontractor.

Contractor to confirm review of the above requirement and confirm in writing that Contractor agrees without exception. If Contractor does have an exception, please explain in detail the exception.

Contractor must provide detailed information as requested in the above requirement(s).	
The legal business name, address, telephone number of the subcontractor(s).	
A description of subcontractor's organization and the services it will provide and information concerning subcontractor's ability to provide the Contract Activities.	
The relationship of the subcontractor to the Contractor.	

Contractor must provide detailed information as requested in the above requirement(s).	
Whether the Contractor has a previous working experience with the subcontractor. **If yes, provide the details of that previous relationship.**	
A complete description of the Contract Activities that will be performed or provided by the subcontractor.	
Of the total bid, the price of the subcontractor's work.	

19. STATE RESOURCES/RESPONSIBILITIES

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

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

State Contract Administrator
Name: Christopher Martin
Phone: 517-643-2833
Email: martinc20@michigan.gov

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

DTMB Program Manager
Name: Jeff LaBean
Phone: 517-243-1743
Email: labeanj@michigan.gov

Agency Program Manager
Name: Lindsey Renner
Phone: 517-202-5356
Email: rennerl1@michigan.gov

20. MEETINGS

Following go-live, Contractor must facilitate monthly meetings (or more or less if determined necessary by the parties) to ensure ongoing support success.

The Contractor must attend the following meetings, at a location and time as identified by the state, at no additional cost to the State:
   •   Annual (or more often as needed) (virtual or in-person) as agreed between the parties.

Contractor must describe how they will meet the meeting requirements set forth above and note any exceptions for successful implementation and ongoing support of the Solution.   If Contractor has an alternative planned approach for project meetings provide details, including purpose, roles and responsibilities, and proposed frequency.

21. (RESERVED)

22. PROJECT MANAGEMENT

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

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

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

SUITE's primary goal is the delivery of on-time, on-budget, quality systems that meet customer expectations. SUITE is based on industry best practices, including those identified in the Project Management Institute's PMBoK and the Capability Maturity Model Integration for Development. It was designed and implemented to standardize methodologies, processes, procedures, training, and tools for project management and systems development lifecycle management. It offers guidance for efficient, effective improvement across multiple process disciplines in the organization, improvements to best practices incorporated from earlier models, and a common, integrated vision of improvement for all project and system related elements.

While applying the SUITE framework through its methodologies is required, SUITE was not designed to add layers of complexity to project execution. There should be no additional costs from the Contractor, since it is expected that they are already following industry best practices which are at least similar to those that form SUITE's foundation.

SUITE's companion templates are used to document project progress or deliverables. In some cases, Contractors may have in place their own set of templates for similar use. Because SUITE can be tailored to fit specific projects, project teams and State project managers may decide to use the Contractor's provided templates, as long as they demonstrate fulfillment of the SUITE methodologies.

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

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

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

Issues shall be escalated for resolution from level 1 through level 3, as defined below:
- Level 1 – Subject Matter Experts (SME's)
- Level 2 – Project Managers / Business Owner
- Level 3 – Executive Sponsor

The Contractor shall also maintain a defects log for software defects identified by the State. The defects log must be communicated to the State's Project Manager on an agreed upon schedule, with email notifications and updates. The defects log must be updated and must contain the following minimum elements:

- Description of each defect
- Defect identification date
- Priority for fixing defects (to be mutually agreed upon by the State and the Contractor)

- Contractor resources assigned responsibility for fixing each defect
- Estimated date for fixing each defect
- Description of the fix to be applied

23. RESERVED

24. ADDITONAL INFORMATION

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

SCHEDULE A – TABLE 1 - Business Specification Worksheet

Instructions for Completing the Business Specifications Worksheet

Contractors must respond to each business Specification on how they will meet the requirements in the document provided. Contractor must not alter the document.

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

Column A: Business Specification number.
> **NOTE:**
> - If there is a "**Mandatory Minimum**" section included in the Business Specifications Worksheet, any items listed under this section must be met by the Contractor to avoid disqualification.   Further, Contractor must provide adequate documentation to support such Mandatory Minimum requirements.
> - The "**Required**" section of the Business Specifications Worksheet lists items that the State requires to be part of the Solution. "Required" items will be evaluated and scored upon per the State evaluation process.
> - The "**Optional**" section of the Business Specifications Worksheet lists items that are not required at the time of the solicitation but may be desired by the State in the future. Such "Optional" items will be evaluated and used in a best value award recommendation

Column B: Business Specification description.

Column C: Contractor must indicate how it will comply with the business Specification. Contractor must enter **"Y"** to one of the following:

- **Current Capability –** This capability is available in the proposed Solution with no additional configuration or cost
- **Requires Configuration –** This capability can be met through Contractor-supported changes to existing settings and application options as part of the initial implementation at no additional cost (e.g., setting naming conventions, creating user-defined fields).
- **Customizations to Software Required** – The requirement can be met through Contractor modifying the underlying source code, which can be completed as part of the initial implementation.
- **Future Enhancement –** This capability is a planned enhancement to the base software and will be available within the next 12 months of contract execution at no additional cost.
- **Not Available –** This capability is not currently available, and a future enhancement is not planned.

> **NOTE:** Configuration is referred to as a change to the Solution that must be completed by the awarded Contractor prior to Go-Live but allows an IT or non-IT end user to maintain or modify thereafter (i.e. no source code or structural data model changes occurring).
>
> Customization is referred to a modification to the Solution's underlying source code, which can be completed as part of the initial implementation. All configuration changes or customization modifications made during the term of the awarded contract must be forward-compatible with future releases and be fully supported by the awarded Contractor without additional costs.
>
> Contractor shall understand that customizations (i.e. changes made to the underlying source code of the Solution) may not be considered and may impact the evaluation of the Contractor's proposal.

Column D: The Contractor must also fully disclose how they will meet the requirements in their proposal response. This column is for Contractor to describe how they will deliver the business Specification and if the Contractor proposes configurations or customizations, the Contractor must explain the details of the impacted risk that may be caused if configured or customized to meet the business Specification. Description must be no more than 250 words for each business Specification.

	A	B	C					D
	Business Specification Number	Business Specification	Current Capability	Requires Configuration	Requires Customization	Future Enhancement	Not Available	Contractor to explain how they will deliver the business Specification. Explain the details of any configuration/customization and the impacted risk that may be caused if configured or customized to meet the business specification.
1.0 General								
	1.1	Solution must be a Software-as-a-Service (SaaS).	x					LCPtracker is a fully hosted Application Service Provider (ASP). LCPtracker is a highly configurable SaaS Solution currently in use by 9 state Departments of Transportation
	1.2	The solution must be accessible to users via mobile devices.	x					LCPtracker is accessible on any type of device as long as there is internet access. LCPtracker is 100% web hosted in the Microsoft Azure Cloud and is redundantly backed up and therefore, software doesn't need to be hosted on a user's computer. All users need is web browser access to www.lcptracker.net. LCPtracker supports the following browsers: Microsoft Edge, Mozilla Firefox and Google Chrome.
	1.3	The solution must provide users with real-time data, immediately after collection.	x					As a cloud-based software utilizing Microsoft Azure for hosting infrastructure, users have real-time access to data submitted into the database. There are over 70 reports that can be pulled up to analyze this real time data as needed
	1.4	The solution must provide role-based security by user type, internal State of Michigan users and External State of Michigan Contractors.	x					Yes, there are multiple levels of access that you can grant to the system. The full administrator will have the ability to create logins for other individuals and select the level of access (e.g. Read only, limited administrator, project manager etc.)
	1.5	The solution must provide a workflow to assign prime contractors and project managers to specified projects.	x					LCPtracker allows project managers and prime contractors to be assigned to specified projects through the process of setting up a project.
	1.6	The solution must provide users the ability to affix digital signature to certify payroll and payroll report information.	x					LCPtracker utilizes eSignature technology to authenticate digital signatures to all certified payroll information. Documentation on LCPtracker eSignature technology is available upon request from MDOT.
2.0 Prevailing Wage and Labor Compliance Data								
	2.1	Prime contractors and subcontractors must have the ability to add, edit, and view employee information required by the Davis Bacon Act, which includes, but is not limited to: • Name • Address	x					LCPtracker allows for prime contractors and subcontractors to enter all of listed here, as well as, a variety of other demographic information via the Employee Setup table and/or the certified payroll entry process.

A	B	C					D
Business Specification Number	Business Specification	Current Capability	Requires Configuration	Requires Customization	Future Enhancement	Not Available	Contractor to explain how they will deliver the business Specification. Explain the details of any configuration/customization and the impacted risk that may be caused if configured or customized to meet the business specification.
	• Last Four Digits of Social Security Number • Employee work classification • Hourly rates of pay, including rates of contributions or costs anticipated for fringe benefits or their cash equivalents • Fringe benefit p• Apprenticeship and/or trainee and program level. lans and programs.						
2.2	Prime contractors and subcontractors must have the ability to search and view projects that they have been assigned.	x					When a prime contractor or subcontractor logs into their database utilizing their own unique password, they will see the projects that they have been assigned to on the main page Project dashboard. They will only be able to see the projects they have been assigned to, not any other contractor's projects. Additionally, the system auto generates emails out to contractors when they are assigned to a project.
2.3	Prime contractors and subcontractors must have the ability to associate employees to the project(s) they have been assigned.	x					Contractors have the ability to add/edit their employee data in LCPtracker and Prime Contractors and subcontractors must select the project employees that are working when entering or uploading weekly certified payroll records.
2.4	Prime contractors and subcontractors must have the ability to add, edit, and view payroll data for their employees in accordance with the Davis Bacon Act, which includes, but is not limited to: • Daily and weekly numbers of hours worked • Deductions made • Actual wages paid • Employee work classification(s) on project • Jurisdiction and Location of project	x					Prime contractors and subcontractors are able to add, edit and view payroll data for their employees at any time. They are able to add, edit and view all information that would be submitted on the certified payroll report including daily and weekly hours worked, deductions made, actual wages paid, employee work classifications on each project and jurisdiction and location of the projects. The employee information can have edits made any time before certifying and also for a period of time designated by the administrator after the certified payroll has been submitted.
2.5	Contractors must not be allowed to edit payroll data after 21 days from the original submittal date.	x					This setting is configurable by MDOT. LCPtracker can meet this requirement.
2.6	The solution must have the ability to save the original payroll data submitted and the final submittal if revised.	x					LCPtracker stores all copies of the payroll data submitted. Revised payroll data would show as a superseded version.

	A	B	C					D
	Business Specification Number	Business Specification	Current Capability	Requires Configuration	Requires Customization	Future Enhancement	Not Available	Contractor to explain how they will deliver the business Specification. Explain the details of any configuration/customization and the impacted risk that may be caused if configured or customized to meet the business specification.
2.7		The solution must notify the system administrator, project manager, and prime contractor if payroll data is modified.	X					Revised payrolls display as "Resubmitted" within the system. Additionally, summary reports can be generated which show the modified versions in RED.
2.8		Prime contractor must have the ability to provide contractors with access to edit payroll data after the 21 day time period..	X					Prime contractors can allow contractors to edit payroll after the 21-day time period via the "permit edit" function within LCPtracker.
2.9		Prime contractors and Subcontractors must be allowed to submit and view certified payroll reports.	X					Prime contractors and subcontractors are responsible for submitting their certified payroll reports in LCPtracker. They are able to review all of their own certified payrolls, as well as their subs' payrolls, and numerous reports.
2.10		Contractors must have the ability to setup subcontractors.	X					This is a configurable setting in LCPtracker. Administrators have the ability to set up contractors and subcontractors or allow contractors to set up their lower tier subcontractors.
2.11		Prime contractors and subcontractors must have the ability to view their own employee information and the data of their subcontractors.	X					All contractors have their own unique login and have access to view their own employee data and the data for any of their subcontractors in Prime Approver mode.
2.12		Project manager must have the ability to approve and reject apprentice status.	X					This is a configurable setting in LCPtracker. Project managers may be set up so that they must be able to approve or reject a worker's apprentice status. This is all stored in LCPtracker for an audit trail.
2.13		Prime contractor and project manager must have the ability to view, accept, and reject payroll data, documents, and submittals.	X					There is a certifications tab in LCPtracker showing all certified payroll submitted into the database in real time. The prime contractor and project manager can be set up as a "prime approver" in which case they would have the ability to not only view all certified payroll data and documents but also accept or reject them.
2.14		The project manager must have the ability to establish apprentice/training classifications.	X					All prevailing wage/Davis-Bacon wage decisions that would apply to projects are stored in LCPtracker and applied to the appropriate projects. The project manager has the ability to add/edit apprentice/training classifications as well.
3.0	System Admin							

A	B	C					D
Business Specification Number	Business Specification	Current Capability	Requires Configuration	Requires Customization	Future Enhancement	Not Available	Contractor to explain how they will deliver the business Specification. Explain the details of any configuration/customization and the impacted risk that may be caused if configured or customized to meet the business specification.
3.1	The system administrator must have the ability to add and edit prevailing wage rates.	X					In LCPtracker, all prevailing wage rates can be added or edited as needed by the system administrator.
3.2	The system administrator must have the ability to establish, edit, and delete contracts.	X					The database administrator is able to establish all contracts needed in their LCPtracker database and edit/delete as needed
3.3	The system administrator must have the ability to add, edit, and delete prime contractors and project manager accounts.	X					The system administrator is able to add, edit or delete any contractors they chose from their account. They are also able to designate who should and should not have a password and access to their LCPtracker database.
3.4	The system administrator must have to the ability to monitor and catalog electronic documents such as fringe benefit statements and apprentice certifications.	X					Documents can be created or uploaded into LCPtracker for storage and monitoring purposes. Any type of document that the administrator finds relevant or important to collect can be stored. Rules can be applied to these documents so that they administrator can designate if they are required or optional.
3.5	The system administrator and project manager must have the ability to create, edit, send, and track administrator notifications to contractors.	X					In the administrator tab of the database, the admins and project managers are able to create notices, including standard notice templates that can be sent on to contractors. These notices that can be sent to contractors are all stored in the database for an audit trail.
4.0 Analytical Processing							
4.1	The solution must compare payroll data to prevailing wage rates to ensure compliance with Davis Bacon and related Acts.	X					LCPtracker's robust validation engine compares wage requirements with every CPR submitted to help contractors comply with prevailing wage and/or Davis-Bacon requirements.
4.2	The solution must validate payroll data entered by the prime contractor and subcontractor with predefined prevailing wage requirements, which includes but is not limited to work classifications	X					Michigan state prevailing wages and/or Davis-Bacon wage determinations including all classifications for the applicable decisions are stored in the administrative LCPtracker database. Our robust validation engine compares the wage determinations including the work classifications with every certified payroll submitted.

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Business Specification Number	Business Specification	Current Capability	Requires Configuration	Requires Customization	Future Enhancement	Not Available	Contractor to explain how they will deliver the business Specification. Explain the details of any configuration/customization and the impacted risk that may be caused if configured or customized to meet the business specification.
4.3	The solution must compare the number of employees and hours worked with project data in the system.	x					LCPtracker allows MDOT to generate reports that calculate the number of employees and hours worked per project.
4.4	The solution must immediately notify users of prevailing wage and labor compliance violations through notifications and e-mail alerts.	x					Prevailing wage and labor compliance violations immediately show up in the "notices" tab when a certified payroll is submitted in the database. The notifications are configurable by the administrator and can be set to restrict contractors from submitting the certified payroll report until the notice(s) are cleared.
4.5	The solution must verify payroll data matches the information gathered from wage-rate interviews.	x					Not Applicable as this is not being purchased by State
4.6	The solution must verify required documentation has been added to project files.	x					Documents can be set as required in the eDocuments tab for a project and the system can verify required documents have been uploaded.
5.0 Forms and Letters							
5.1	The solution must provide wage-rate interview forms and reports.	x					Not Applicable as this is not being purchased by State
5.2	The solution must allow users to fill out wage-rate interview forms.	x					LCPtracker has a site visit form that allows for interviews to be documented including wage-rate interviews.
5.3	The solution must provide the ability to upload and transmit standard letters (templates) and documents electronically.	x					Admin notice templates can be created and sent electronically through the system. They will show up in the contractor's email, as well as, in the contractor's database. The contractor will have the ability to respond to the notice directly in the database as well. All communication is stored for an audit trail.
6.0 Capacity							
6.1	The solution must provide 24-hour, unlimited access to accounts for up to 600 projects, with agreed upon downtime for maintenance.	x					LCPtracker is a web-based, SaaS solution available 24-7 with unlimited access, provided the user has internet access. LCPtracker works with hundreds of agencies and thousands of contractors and is very scalable to allow for any number of projects needed. LCPtracker guarantees at least 99.5% availabilty for our SaaS software solutions over a one-year

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	Business Specification Number	Business Specification	Current Capability	Requires Configuration	Requires Customization	Future Enhancement	Not Available	Contractor to explain how they will deliver the business Specification. Explain the details of any configuration/customization and the impacted risk that may be caused if configured or customized to meet the business specification.
								period. Downtime calculations do not include failures of LCPtracker's, or the client's, Internet Service Provider, Microsoft Azure, or any planned LCPtracker maintenance time. Our trend over the last several months has been <99.9% availability.
7.0	**Interface**							
	7.1	The solution must provide contractors with the ability to interface with various payroll systems including but not limited to: • QuickBooks • Construction Partner • ADP • Paychex • Foundation • Sunburst	x					LCPtracker has 24 standard interfaces created with accounting systems for an easy upload of payroll data into the software. LCPtracker has standard interfaces with all the accounting systems listed, as well as, with Viewpoint
	7.2	The solution must provide contractors with the ability to manually enter employee and payroll data.	x					LCPtracker allows for manual entry of payroll data, as well as, has numerous built in tools to help save time when manually entering the payroll. One example is the ability to copy the previous week's payroll and modify as needed.
8.0	**Reports and Search**							
	8.1	The solution must deliver reports, including but not limited to: • Certified payroll reports (CPR) • Summary of CPR • Penalty/Restitution calculation • Workforce summary reports • Apprentice reports	x					LCPtracker includes over 100 standardized reports including certified payroll reports, certified payroll summary reports, and late certified payroll reports to name a few. We have a standard report that can calculate restitution and penalties when misclassifications are discovered. We also have numerous workforce reports and apprentice reports as part of the standard solution, and a catalog with examples located in our training material section.
	8.2	The solution must provide users with the ability to search by all data category and fields.	x					Most pages within the system provide the ability to search by a variety of data categories such as Project, Contractor, Date Range, etc.

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Business Specification Number	Business Specification	Current Capability	Requires Configuration	Requires Customization	Future Enhancement	Not Available	Contractor to explain how they will deliver the business Specification. Explain the details of any configuration/customization and the impacted risk that may be caused if configured or customized to meet the business specification.
8.3	The solution must limit search results to projects and project information based on user role. Filter and sort the search results: • View information for one or more projects returned by the search. • View information for one or more contactors returned by the search.	x					The vast majority of our 100+ standard reports available in LCPtracker are set up to search by project or across multiple projects, by contractor or all contractors, as well as, date ranges and other parameters. Our report catalog located in our training materials section lists out all parameters available for each report.
9.0 Reporting – These technical requirements apply to all technologies and the tools needed to support them.							
9.1	System reporting product technology must not require any proprietary installed component on the user desktop.	x					100% web-based solution. LCPtracker does not require any installed component.
9.2	System reports must not require any installed component other than the following: • MS-Excel • Adobe Reader	x					LCPtracker does not require any additional component other than MS-Excel and/or Adobe Reader to view LCPtracker's standardreports.
9.3	System standard (e.g., regularly scheduled, recurring) reporting environment must allow: • Standard reports to be executed, printed. • The State to control the information that appears on standard reports so that data security is maintained.	x					Standard reports in LCPtracker can be generated and viewed or printed real time at any point. Certified Payroll Reports can be configured a number of different ways (determined by the administrator) to auto redact certain information that MDOT does not want to show on the reports. This information includes SSN's, addresses, etc.
10.0 Application Security – These technical requirements apply to security measures that are intended to protect both the application itself and the data handled by the application.							
10.1	System access must be logged and have a viewable audit trail(s).	x					LCPtracker meets this requirement
10.2	Access to audit trail logs must be able to be restricted to approved administrators.	x					Only approved administrators would have access to audit trail logs

A	B	C					D
Business Specification Number	Business Specification	Current Capability	Requires Configuration	Requires Customization	Future Enhancement	Not Available	Contractor to explain how they will deliver the business Specification. Explain the details of any configuration/customization and the impacted risk that may be caused if configured or customized to meet the business specification.
10.3	System access and changes to system access must log the following information: • Date/time • Nature of operation • Name of changed item • Name of who made the change	x					LCPtracker logs all the information specified here.
10.4	System must restrict the user from having direct access to the program libraries (e.g., Base code)	x					True. Users of our software online under the State contract do not have access to base code.
10.5	System end-user software applications, or components thereof, must not require privileged, super-user or administrator mode in order to function properly.	x					LCPtracker does not require privileged, super-user or administrator mode in order to function properly.
11.0 Identity Management Security - These technical requirements apply to security measures that are intended to restrict access to the application, system and the data.							
11.1	System must support the following authentication requirement: • User ID and Passwords	x					LCPtracker requires unique user ID's and passwords for all individuals who have access to the database.
11.2	System passwords and user IDs must: • Protect sensitive data • Restrict access to only those intended	x					All access to LCPtracker and the administrator's database is password protected. Access to the database and the user's role is determined by the main administrator of the database. Any user granted access has their own unique login and password.
11.3	System authentication and authorization must be by individual user. Users should belong to groups and roles.	x					Each user of the database will have their own unique login and password for access. Access roles (ex. Limited administrator, full administrator, read only access, etc.) is determined by the main administrator.
11.4	System must provide the system administrators with the ability to assign users to roles/privileges.	x					Again, the full administrator has the ability to set up additional users to the database and assign them roles such as limited administrator, project manager, read only user, etc.).

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Business Specification Number	Business Specification	Current Capability	Requires Configuration	Requires Customization	Future Enhancement	Not Available	Contractor to explain how they will deliver the business Specification. Explain the details of any configuration/customization and the impacted risk that may be caused if configured or customized to meet the business specification.
11.5	User account information must be stored securely. Passwords must be stored in an encrypted form.	x					Passwords are encrypted and all other data is encrypted at rest.
11.6	System must enforce the following rules on individual passwords for allowable characters, length and expiration period: • Standard Windows characters allowed • Minimum of 8 characters in length • Expires every 90 days • Cannot reuse password for 1 year	x					Password requirements can be defined and set up based on administrator needs. LCPtracker current and meet password requirements include: minimum length (6-20), includes number, includes special character, non-numeric first character, non-numeric last character, and change every "x" days. Once the administrator's password rules have been defined and applied, all users of the administrator's database must follow these password rules.
11.7	System must lock out users after six invalid login attempts due to bad passwords.	x					LCPtracker locks users out of the database after 5 invalid login attempts.
12.0 Database Server- These technical requirements apply to database technologies and the tools needed to support databases.							
12.1	If the system provides Default User Accounts, Default Groups, or Default Roles Contractor must change, lock and expire default passwords for these default users, groups and roles. Contractor must change, lock and expire all accounts that are specific to features that are not used within the system.	x					There are no default user accounts, groups or roles in the administrator's database. All possible accounts, groups and user roles would be clearly defined and configured with the administrators needs during the set up and implementation of the database.
12.2	Shared database accounts are prohibited. The Contractor and system must not utilize database accounts that are intended to be shared. Unique database accounts are required to establish accountability and effective monitoring of all database access/changes.	x					Each LCPtracker customer has their OWN database account. For data security and integrity, LCPtracker has a separate database for every customer.
12.3	The system must provide Password Controls: Use strong passwords for all database accounts in all environments.	x					Password Rules can be configured for system-wide use by MDOT to require: minimum length, number, special character, upper/lowercase letters, non-numeric first and/or last character, as well as, the number of days to expire the password.

A	B	C					D
Business Specification Number	Business Specification	Current Capability	Requires Configuration	Requires Customization	Future Enhancement	Not Available	Contractor to explain how they will deliver the business Specification. Explain the details of any configuration/customization and the impacted risk that may be caused if configured or customized to meet the business specification.
12.4	The system must provide Public User/Group/Role accounts: Any access of Public User, Group or Role accounts will be monitored.	x					LCPtracker can allow for public users/group/role accounts. This is a configurable setting determined by the administrator and the user can be granted "read only" access
12.5	The system must provide Encryption	x					All data in LCPtracker is encrypted at rest. Users and administrators are authenticated inside of the LCPtracker application as part of the login process, login credentials are encrypted. All sessions between the browser and the service are encrypted. Encryption type is SSL/TLS
12.6	The system must adhere to the DTMB Segregation of Duties policy. Segregation of duties must be adhered to for DBAs to avoid risk of compromising data integrity. If segregation of duties is not possible due to staff limitations, compensating controls must be implemented to address the risk and ensure unauthorized activities do not occur. In these cases, enhanced monitoring will be implemented by DTMB.	x					LCPtracker adheres to the DTMB Segregation of Duties policy.
12.7	The system must support current versions of database software: the database Contractor (i.e.; Oracle, Microsoft) must currently support all database platforms used for the purpose of SOM business.	x					LCPtracker is a web-based software hosted in Microsoft Azure. There is no need for LCPtracker to integrate with other software platforms used by SOM at this time. In addition, the Michigan Department of Transportation has been utilizing LCPtracker since 2014 and there has been no issue with other SOM database platforms.

A	B	C					D
Business Specification Number	Business Specification	Current Capability	Requires Configuration	Requires Customization	Future Enhancement	Not Available	Contractor to explain how they will deliver the business Specification. Explain the details of any configuration/customization and the impacted risk that may be caused if configured or customized to meet the business specification.
12.8	The system must adhere to the DTMB Monitoring of Privileged Users policy. All privileged users/roles must be audited periodically, to verify that only authorized DBAs have been assigned any DBA roles. This verification process must be documented. Automated Log Management must be used to monitor the activity of privileged users. Best practices would include auditing all activities and transactions; identifying anomalous activities such as viewing sensitive data, or creating new accounts with super user privileges; and reconciling observed activities such as adding or deleting tables with authorized change requests.	x					LCPtracker can adhere to the DTMB Monitoring of Privileged Users policy.
13.0 System Administration and Licensing - These technical requirements specify that the system is supportable by SOM and is compliant with Contractor licensing requirements.							
13.1	System software licensing must be inclusive for all packages included in the solution, unless explicitly listed and detailed.	x					Yes, all software functionality is included with the license agreement, unless otherwise stated.
13.2	System documentation must describe the level of effort and anticipated downtime for product upgrade.	x					LCPtracker guarantee's 99.5% uptime. All upgrades are fully tested in a beta environment before implementation. Rarely, if ever, do these upgrades require any downtime.
13.3	System documentation must provide the anticipated frequency and requirements of patches (releases, break-fix, 0-day), minor, and major releases.	x					All updates and patches are noted immediately upon login to the database. New feature releases are typically released once a month only after extensive testing in a test environment then in a beta environment before release to production.
13.4	System documentation must clearly describe any special requirements (such as browser components, etc.) that could affect the capabilities or performance of the system.	x					LCPtracker documentation describes supported browsers.
13.5	System software license must be for perpetual use for a fixed fee without additional royalties or service fees, except for ongoing software maintenance.	x					Pricing for the LCPtracker database is for an annual license at a set level defined by the customer usage. There are no other fees for service unless the customer decides to add any additional optional LCPtracker services

A	B	C					D
Business Specification Number	Business Specification	Current Capability	Requires Configuration	Requires Customization	Future Enhancement	Not Available	Contractor to explain how they will deliver the business Specification. Explain the details of any configuration/customization and the impacted risk that may be caused if configured or customized to meet the business specification.
13.6	System software license must be able to handle as many concurrent or named users as needed.	x					LCPtracker currently has over 600 agency and prime contractor clients, as well as, hundreds of thousands of contractor users. Our cloud based solution is highly scalable to meet the needs of our customers, regardless of the number of users or projects.
14.0 System Performance - These technical requirements are intended to ensure that applications and systems perform in a manner that guarantees a good user experience, carries the workload and performs as designed.							
14.1	System should maintain optimum performance over Wide Area Network (WAN).	x					LCPtracker meets this requirement.
15.0 Application Configuration Management – (PCI-DSS) - These technical requirements apply to software and hardware installation procedures and methods.							
15.1	Contractor must ensure that all known security vulnerabilities be addressed in accordance with the following industry-accepted system hardening standards: SysAdmin Audit Network Security (SANS) • National Institute of Standards Technology (NIST) • Center for Internet Security (CIS)	x					Our Microsoft Azure hosted data centers more than address all standards stated here.
15.2	System must require that all unnecessary and unsecure services and protocols (those not directly needed to perform the device's specified function) are disabled.	x					Only needed protocols, ports and services are enabled.
15.3	Contractor must ensure that all unnecessary functionality are removed, including but not limited to: • Scripts • Features • Subsystems	x					LCPtracker works to ensure that all unnecessary functionality is removed.
16.0 Application Password Management – (PCI-DSS) - The following technical requirements apply to password management procedures and methods for applications and servers.							

A	B	C					D
Business Specification Number	Business Specification	Current Capability	Requires Configuration	Requires Customization	Future Enhancement	Not Available	Contractor to explain how they will deliver the business Specification. Explain the details of any configuration/customization and the impacted risk that may be caused if configured or customized to meet the business specification.
16.1	MDOT support staff must verify the user's identity before performing a password reset.	x					MDOT has the ability to verify user's identity prior to resetting a password.

A	B	C					D
Business Specification Number	Business Specification	Current Capability	Requires Configuration	Requires Customization	Future Enhancement	Not Available	Contractor to explain how they will deliver the business Specification. Explain the details of any configuration/customization and the impacted risk that may be caused if configured or customized to meet the business specification.
16.2	System must comply with rules defined in the SOM Password Management document referred to below:	x					Configurable Password Rules: - Minimum length (6-20) -Includes number -Includes special character -Non-numeric first character -Non-numeric last character -Change every "x" days. - Lockout after 5 attempts Users are locked out of the database after 5 consecutive invalid attempts. The full administrator must then reset the password for the user Each client has a separate database for security of login. In addition, LCPtracker has created a password complexity feature request process. This means that customers who may require more stringent password complexity rules can notify LCPtracker of their requirements and LCPtracker can set those rules as requirements for their database. Once the rules are defined by the customer, their database will be set up so that all administrators and contractor users of their database must comply with the password rule requirements defined by the client
17.0 System Auditing							
17.1	System must have the ability to maintain a historical record of all changes made to any item within the system (e.g., data element, business rule, process control, software program), the ID of the person or process that made the change, the before images of the affected data records, and the date and time the change was made.	x					LCPtracker complies with this standard.

A	B	C					D
Business Specification Number	Business Specification	Current Capability	Requires Configuration	Requires Customization	Future Enhancement	Not Available	Contractor to explain how they will deliver the business Specification. Explain the details of any configuration/customization and the impacted risk that may be caused if configured or customized to meet the business specification.
17.2	System audit logs must be able to be exported.	x					LCPtracker provides the ability for audit logs to be exported for the fees contained in the LCPtracker Pricesheet.
18.0 Error Handling							
18.1	System must log all errors.	x					LCPtracker has a violations tab that houses all errors that are flagged by the system.
18.2	System error messages must include user-friendly language for referral purposes.	x					LCPtracker software language is user friendly and we have an extensive support team to help with any errors/issues that may arise.
19.0 Edit and Validation Control							
19.1	System must include comprehensive field validation to prevent incomplete or incorrect data from entering the system.	x					LCPtracker has over 65 validations that are automatically applied to every payroll added to the database to help contractors comply with Davis-Bacon/prevailing wage requirements.

SCHEDULE B – PRICING

LCPtracker Pro – Pricing							
Construction Capacity	**List Price**	**% Discount**	**Year 1**	**Year 2**	**Year 3**	**Year 4**	**Year 5**
Up to $5 Billion	$132,252.00	21.00%	$104,479.08	$109,703.03	$115,188.19	$120,947.59	$126,994.97
Up to $5.5 Billion	$141,133.00	21.00%	$111,495.07	$117,069.82	$122,923.31	$129,069.48	$135,522.95
Up to $6 Billion	$147,660.00	21.00%	$116,651.40	$122,483.97	$128,608.17	$135,038.58	$141,790.51
Up to $6.5 Billion	$156,541.00	21.00%	$123,667.39	$129,850.76	$136,343.30	$143,160.46	$150,318.49
Up to $7 Billion	$165,422.00	21.00%	$130,683.38	$137,217.55	$144,078.43	$151,282.35	$158,846.47
Up to $7.5 Billion	$174,303.00	21.00%	$137,699.37	$144,584.34	$151,813.56	$159,404.23	$167,374.44
Up to $8 Billion	$179,225.00	21.00%	$141,587.75	$148,667.14	$156,100.49	$163,905.52	$172,100.80

LCPTRACKER ANNUAL SERVICE   FEE FOR ACCESS TO LCPTRACKER PRO INCLUDES:
- Unlimited administrative users; Unlimited contractor users (at no cost directly to the Client).
- Phone, email, and live chat technical support for administrative and contractor users (not training).
- Unlimited contractor and administrator access to on-demand, pre-recorded web training videos.
- Relevant data storage for the term indicated above. All regular software updates.

1. Rate Card for Ancillary Professional Services.

Resource	List Price	% Discount	Year 1	Year 2	Year 3	Year 4	Year 5
Custom Development	$275.00	21.00%	$217.25	$228.11	$239.52	$251.49	$264.07
Project Management Services	$175.00	21.00%	$138.25	$145.16	$152.42	$160.04	$168.04

Optional Service			
Custom Development	Hours	Hourly Rate	Total Price
Integration With SOM Identity & Access Management environment "MILogin"	50	217.25	$10,862.50

Price proposals must include a fixed-price hourly-rate rate card for ancillary professional services (e.g. future enhancement configuration services) broken down by role (e.g. Solution design architect).

Additional Pricing Terms

"**Construction Capacity**" means the value of construction calculated by adding the correct total (not just labor costs) updated construction bid award value of all active ("Open/Active") projects in the State's account (which sum also includes all accounts in their Affiliate's' accounts) in the Services. The value of projects marked as "Open/Active" within the Services for the State is determined by the accurate total of project Budget amounts including change orders. This calculation is done monthly by Contractor. If a project is closed and no longer marked "Active", the project will no longer be counted in that month's open active projects.

CONSTRUCTION CAPACITY
(a) The original winning bid amount for State's construction projects must be provided by State to Contractor so it may be entered accurately in the relevant project "*Budget*" field in the LCPtracker Professional services platform. The winning bid amount must be updated by State if change orders exceed 25% of the original total project winning bid amount for the relevant project (through written requests to LCPtracker Support Department – support@LCPtracker.com).
(b) Yearly Fees are due under this Product Schedule are due on the date hereof or on the yearly anniversary hereof unless provided otherwise.
(c) Service Fees for access to the Services detailed above will change if one of the following events occurs: (i) If the sum of all "*Budget*" amounts for projects entered in LCPtracker Professional during the then current year of the Subscription Term exceed the Construction Capacity level purchased (State will be invoiced for an amount equal to the difference between the Construction Capacity level provided for that year of the Subscription Term and the cost level for which the current correct Construction Capacity applies, prorated for the number of months remaining in the then current year of the Subscription Term. The new rate will then be applicable to the immediately following year of the Subscription Term), (ii) The Construction Capacity increases beyond the previously purchased level on the annual anniversary of this Product Schedule.

Travel and Expenses
The State does not pay for overtime or travel expenses.

SCHEDULE C - INSURANCE SCHEDULE

Required Coverage.

1.1 **Insurance Requirements.** Contractor, at its sole expense, must maintain the insurance coverage identified below. All required insurance must: (i) protect the State from claims that arise out of, are alleged to arise out of, or otherwise result from Contractor's or subcontractor's performance; (ii) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and (iii) 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
Commercial General Liability Insurance	
<u>Minimal Limits:</u> $1,000,000 Each Occurrence $1,000,000 Personal & Advertising Injury $2,000,000 Products/Completed Operations $2,000,000 General Aggregate Limit	Contractor must have their policy endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds using endorsement CG 20 10 11 85, or both CG 20 10 12 19 and CG 20 37 12 19.
Automobile Liability Insurance	
<u>Minimal 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.
Workers' Compensation Insurance	
<u>Minimal Limits:</u> Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
<u>Minimal Limits:</u> $500,000 Each Accident $500,000 Each Employee by Disease $500,000 Aggregate Disease.	
Professional Liability (Errors and Omissions) Insurance	
<u>Minimal Limits:</u> $3,000,000 Each Occurrence $3,000,000 Annual Aggregate	

1.2 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.

1.3 Contractor must: (a) provide insurance certificates to the Contract Administrator, containing the agreement or delivery order number, at Contract formation and within twenty (20) calendar days of the expiration date of the applicable policies; (b) require that subcontractors maintain the required insurance contained in this Section; (c) notify the Contract Administrator within five (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.

1.4 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).

SCHEDULE D - SERVICE LEVEL AGREEMENT

IF THE SOFTWARE IS CONTRACTOR HOSTED, then the following applies:

<u>Client = State</u>

1. <u>Definitions.</u> For the purposes of this Schedule D, in addition to the terms defined in the text of this Schedule D or in the Agreement to which it applies to, the following terms shall have the following respective definitions:
    (a) "**Client Support**" means the business team within Contractor that provides services to assist Client, as administrator of the Services, to resolve issues with the Services.
    (b) "**Incident**" means any set of circumstances resulting in a failure to meet a Service Level for Client usage of the Contractor SaaS platforms forming part of the Services except for an Incident caused by an Exclusion.
    (c) "**Service Credit**" is the percentage of the monthly portion of the Service Fees for the Services (that are attributable to the main SaaS product for access to the applicable areas of the Contractor Professional SaaS platform only) that is credited to Client for a Service Level not met pursuant to this Schedule D for the month where the Service Level was not met pursuant to this Schedule D.s
    (d) "**Service Level**" means standards Contractor adheres to and by which it measures the level of service it provides as specifically set forth below.
    (e) "**Software Error**" means any reproducible failure of the SaaS platform Services to materially conform to its Specifications , which failure is not due to an Exclusion (as defined below).
    (f) "**Specifications**" means, with respect to the SaaS platform Services, the applicable specifications or requirements set forth in the Agreement, or in any Software Schedule.

2. <u>Service Credit Claims.</u>
    (a) It shall be in the sole discretion of Contractor to determine whether Contractor has met the relevant Service Level. Client and any other parties working with Client and using the Services must at all times cooperate with Contractor in testing, determining, and verifying that a qualifying service outage under this Schedule D has occurred.
    (b) Contractor provides the Service Credits described below subject to the terms of this Schedule D. These Schedule D terms will be fixed for the duration of the initial twelve (12) month term of the Subscription Term. The version of this Schedule D that is current at the time the next twelve (12) months of the Subscription Term commences will apply throughout the next twelve (12) months of the Subscription Term. A copy of the current Schedule D is available at https://www.lcptracker.com/SLA-Addendum1 whose terms will automatically supersede this version upon any updates to the online version.
    (c) In order to be eligible to submit a claim with respect to any Incident, the Client must first have notified Client Support in writing of the Incident and its intention to submit a claim, using the procedures set forth by Contractor, communicated to the Client through the Agreement and this Schedule D, within a maximum of two (2) business days following the Incident.
    (d) State must provide to Client Support all reasonable details regarding the claim, including but not limited to, detailed descriptions of the Incident(s), the duration of the Incident(s), the portion of the SaaS platform Services affected and any attempts State or a User made by itself to resolve the Incident.
    (e) In order for Contractor to consider a claim, State must submit the claim, including sufficient evidence in Contractor's consideration to support the claim, within thirty (30) days from the Incident.
    (f) Contractor will use all information reasonably available to it, namely information received by

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the State and information collected by its Client Support Department, to validate claims and make a good faith judgment on whether the Incident is a qualifying claim under this Schedule D.

3. <u>Exclusions.</u> Service Levels do not apply to any performance or availability issues:
   (a) Due to circumstances or factors outside Contractor's reasonable control;
   (b) That resulted from State's or third-party hardware or software, or as a result of a customization or report generation requested by State;
   (c) Caused by the failure or deficient performance of power, equipment, products, services, or systems not provided by Contractor;
   (d) That resulted from actions, inactions, misconduct or accident of State, Users, or third parties or any other breach of the Agreement;
   (e) Caused by State's or User's use of the Services after Contractor advised State or User to modify its use of the Services, if State did not modify its use as advised;
   (f) During Scheduled Downtime (maintenance or upgrades);
   (g) Where the subject impact, risk, or non-conformity, as applicable, is of little or no importance or significance;
   (h) During beta, test, and trial services (as determined by Contractor); or
   (i) Caused by the failure by State or a User to take an action required by Contractor to resolve an Incident.
   Sections 3 (a) – (i) above referred to herein as the "**Exclusions**".

4. <u>Service Credits.</u>
   (a) The amount and method of calculation of Service Credits is described below in connection with each Service Level description.
   (b) Service Credits are State's sole and exclusive financial remedy for any Incidents.
   (c) The Service Credits awarded in any calendar month shall not, under any circumstance, exceed State's monthly Service Fees for the basic access subscription to the affected SaaS product forming part of the Services.
   (d) Service Credits do not apply to and do not include work performed for one-time Service Fees associated with the Services, or to any taxes, programming work Service Fees, customization Service Fees, or governmental or organizational fees for bodies such as the GSA, or any fees associated with other vendors providing services to State or Users.
   (e) Service Credits will not result in any refunds and can only be applied against amounts payable by State.
   (f) Service Credits are only paid to State and other Users are not entitled to any compensation.

5. <u>Monthly Uptime Service Levels for the Contractor SaaS platform in the Contractor SaaS platform portion of the Services</u>.
   (a) <u>Definitions</u>.
      (i) "Downtime" is defined as any period of time when State is unable to access the affected SaaS platform Services.
      (ii) "Scheduled Downtime" is defined as: (i) Downtime within pre-established maintenance windows; or (ii) Downtime during major version upgrade. Contractor performs releases/maintenance no earlier than 6 p.m. PST and performed either (a) when needed to address issues or (b) to improve the product. These occur either on a prescheduled timeline or as needed to address system issues. The system disruption involved is (generally) approximately 5 minutes. Any longer disruption, which includes disruptions during business hours to address an urgent security matter/system functionality, would be noticed to customers that are online in-app and/or on the System Status Page.
      (iii) "Monthly Uptime Percentage" for a specific State is calculated by taking the total

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number of minutes in a calendar month minus total number of minutes of Downtime experienced in a given calendar month, divided by the total number of minutes in that calendar month.

(b) Uptime Service Levels and Monthly Service Credit.

Monthly Uptime Percentage	Applicable Monthly Service Fee Credit
>=99.5%	0.0%
>=99% but < 99.5%	5%
>=80% but < 99%	10%
<80%	100%

6. Support.

(a) Submission of Error Reports. State may report Software Errors to Contractor by telephone, e-mail, or the internet. State will use reasonable efforts to provide information requested by Contractor regarding a reported Software Error. Contractor will maintain a record of all submitted Software Error reports and track Contractor actions toward problem resolution.

(b) Correction of Software Errors. Contractor will endeavor to correct all Software Errors reported by State in accordance with this Schedule D and the Table below.

(c) Support. Contractor will make available by telephone, email, and live chat all qualified personnel necessary from 5:00 am PST to 5:30 pm PST, Monday through Friday, excluding all Federal holidays ("Contractor Basic Support Hours") in order to provide problem resolution.

(d) Unless otherwise mutually agreed in writing, upon receiving a Software Error report from State, and provided that the Software Error can be recreated, Contractor shall respond and use commercially reasonable efforts to correct the Software Error in accordance with this Schedule D. "Response" means confirming receipt of a Software Error, verifying details, attempting to duplicate the Software Error, and confirming status to State. "Resolution" means providing State requestor with an answer, a patch being made to the Services or a resolution action plan. Contractor's goal is to return all State calls within the applicable scheduled period, however, Contractor does not guarantee this response/resolution time. "Business Hour" and "Business Day" mean those hours and days based on the Contractor Basic Support Hours. Furthermore, the State and, where applicable, the State's authorized Users are required to assist Contractor in resolving Software Errors, and any Service Level standards referred to in this Schedule D will be extended/changed if the State or these other involved parties fail to cooperate or provide necessary resources or information.

Category	Definition	Response Goal	Resolution Goal
Critical (Red)	Loss of access for the State to the SaaS platform Services, or the SaaS platform Services are not functioning preventing the State from performing mission critical business functions, and there is no workaround	One Business Hour	Two (2) Business Days
Medium (Yellow)	State is concerned as operations are negatively materially impacted or there are	One Business Day or less	Within 14 Business Days

	material performance issues with the SaaS platform Services but Services are still generally operational and there is a workaround		
Minimal (Green)	Minor issues, and suggestions	3 Business Days or less	None or as otherwise mutually agreed in writing

Service Credits for Failing to achieve above Resolution Goals:

Red: Credit the pro rata portion of the Service Fee for the applicable month to Client (unless the credit has already been granted for the same month under the terms of this SLA) where Client is adversely affected and there is no resolution.

Yellow: Credit 10% of applicable month Service Fee, unless a credit has already been granted for the same month under the terms of this SLA.

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

Data Storage. Contractor will provide sufficient storage capacity to meet the needs of the State at no additional cost over and above Contractor's pricing tiers.

Data Backup. Contractor will conduct, or cause to be conducted, daily back-ups of State Data and perform, or cause to be performed, other periodic offline back-ups of State Data on at least a weekly basis and store and retain such back-ups as specified in **Schedule A**. Contractor must, within five (5) Business Days of the State's request, provide the State, without charge and without any conditions or contingencies whatsoever, an extract of State Data in the format specified by the State at the hourly fee detailed in Schedule B (the Rate Card for Ancilliary Professional Services)**.**

Disaster Recovery. Throughout the Term and at all times in connection with its actual or required performance of the Services, Contractor will maintain and operate a backup and disaster recovery plan to achieve a Recovery Point Objective (RPO) of 24 hours, and a Recovery Time Objective (RTO) of 8 hours (the "**DR Plan**"), and implement such DR Plan in the event of any unplanned interruption of the Hosted Services. Contractor's current DR Plan is attached as **Schedule F**. Contractor will actively test, review and update the DR Plan on at least an annual basis using industry standard practices as guidance. Contractor will provide the State with copies of all such updates to the Plan annually. If Contractor fails to reinstate all material Hosted Services and Software within the periods of time set forth in the DR Plan, the State may, in addition to any other remedies available under this Contract, in its sole discretion, immediately terminate this Contract as a non-curable default.

SCHEDULE D - Attachment 1 – Contact List

SCHEDULE E – DATA SECURITY REQUIREMENTS

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

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

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

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

"**Hosting Provider**" means any Permitted Subcontractor that is providing any or all of the Hosted Services under this Contract.

"**NIST**" means the National Institute of Standards and Technology.

"**PCI**" means the Payment Card Industry.

"**PSP**" or "**PSPs**" means the State's IT Policies, Standards and Procedures.

"**SSAE**" means Statement on Standards for Attestation Engagements.

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

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

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

(a)   ensure the security and confidentiality of the State Data;

(b)   protect against any anticipated threats or hazards to the security or integrity of the State Data;

(c)   protect against unauthorized disclosure, access to, or use of the State Data;

(d)   ensure the proper disposal of any State Data in Contractor's or its subcontractor's possession; and

(e)   ensure that all Contractor Representatives comply with the foregoing.

The State has established Information Technology (IT) PSPs to protect IT resources under the authority outlined in the overarching State 1305.00 Enterprise IT Policy. In no case will the safeguards of Contractor's data privacy and information security program be less stringent than the safeguards used by the State, and Contractor must at all times comply with all applicable public and non-public State IT policies and standards, of which the publicly available ones are at https://www.michigan.gov/dtmb/policies/it-policies.

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

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

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

5.1 If Hosted Services are provided by a Hosting Provider, ensure each Hosting Provider maintains FedRAMP authorization for most Hosted Services environments throughout the Term, and in the event a Hosting Provider is unable to maintain FedRAMP authorization, the State, at its sole discretion, may either a) require the Contractor to move the Software and State Data to an alternative Hosting Provider selected and approved by the State at Contractor's sole cost and expense without any increase in Fees, or b) immediately terminate this Contract for cause pursuant to **Section 15.1** of the Contract;

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

5.3 ensure that the Software and State Data is securely stored, hosted, supported, administered, accessed, and backed up in the continental United States, and the data center(s) in which the data resides minimally meet Uptime Institute Tier 3 standards (www.uptimeinstitute.com), or its equivalent;

5.4 maintain and enforce an information security program including safety and physical and technical security policies and procedures with respect to its Processing of the State Data that complies with the requirements of the State's data security policies as set forth in this Contract, and must, at a minimum, (i) use reasonable commercial best efforts to be compliant with NIST 800-53 using identified controls and minimum values as established in applicable State PSP's and (ii) be NIST 800-171 compliant as certified by a third party auditing firm;

5.5 provide technical and organizational safeguards against accidental, unlawful or unauthorized access to or use, destruction, loss, alteration, disclosure, encryption, transfer, commingling or processing of such information that ensure a level of security appropriate to the risks presented by the processing of State Data and the nature of such State Data, consistent with standard industry practice and applicable standards (Contractor adheres to the NIST 800-53 framework and has a NIST 800-171 certification. Contractor also has a SOC 2 Type 2 certification).

5.6 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 "malicious actors" and others who may seek, without authorization, to destroy, disrupt, damage, encrypt, modify, copy, access or otherwise use Hosted Services or the information found therein; and

(b)   prevent (i) the State and its Authorized Users from having access to the data of other customers or such other customer's users of the Services; (ii) State Data 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 Data;

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

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

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

6.   **Security Accreditation Process.** Contractor will provide the State a copy of Contractor's SOC 2 Type 2 Report. Throughout the Term, Contractor will assist the State, at no additional cost, with its **Security Accreditation Process**, which includes the development, completion and on-going maintenance of a system security plan (SSP) using the State's automated governance, risk and compliance (GRC) platform, which requires Contractor to submit evidence, upon request from the State, in order to validate Contractor's security controls within two weeks of the State's request. On an annual basis, or as otherwise required by the State such as for significant changes, re-assessment of the system's controls will be required to receive and maintain authority to operate (ATO). All identified risks from the SSP will be remediated through a Plan of Action and Milestones (POAM) process with remediation time frames and required evidence based on the risk level of the identified risk. For all findings associated with the Contractor's solution, at no additional cost, Contractor will be required to create or assist with the creation of State approved POAMs, perform related remediation activities, and provide evidence of compliance. The State will make any decisions on acceptable risk, Contractor may request risk acceptance, supported by compensating controls, however only the State may formally accept risk. Failure to comply with this section will be deemed a material breach of the Contract.

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

8.   **Security Audits.**

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

8.2   Without limiting any other audit rights of the State, the State has the right to review Contractor's data privacy and information security program prior to the commencement of Services and from time to time during the term of this Contract. The State, at its own expense, is entitled to perform, or to have performed, an on-site audit of Contractor's data privacy and information security program. If the State chooses to perform an on-site audit, Contractor will, make all such records, appropriate personnel and relevant materials available during normal business hours for inspection and audit by the State or an independent data security expert that is reasonably acceptable to Contractor, provided that the State: (i) gives Contractor at least five (5) Business Days

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prior notice of any such audit; (ii) undertakes such audit no more than once per calendar year, except for good cause shown; and (iii) conducts or causes to be conducted such audit in a manner designed to minimize disruption of Contractor's normal business operations and that complies with the terms and conditions of all data confidentiality, ownership, privacy, security and restricted use provisions of the Contract. The State may, but is not obligated to, perform such security audits, which shall, at the State's option and request, include penetration and security tests, of any and all Hosted Services and their housing facilities and operating environments.

8.3   During the Term, Contractor will, when requested by the State, provide a copy of Contractor's and Hosting Provider's FedRAMP System Security Plan(s) or SOC 2 Type 2 report(s) to the State within two weeks of the State's request. The System Security Plan and SSAE audit reports will be recognized as Contractor's Confidential Information.

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

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

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

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

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

(a) Contractor must either a) grant the State the right to dynamically scan a deployed version of the Software; or b) in lieu of the State performing the scan, Contractor must dynamically scan a deployed version of the Software using a State approved application scanning tool, and provide the State with a vulnerabilities assessment after Contractor has completed such scan. These scans and assessments i) must be completed and provided to the State quarterly (dates to be provided by the State) and for each major release; and ii) scans must be completed in a non-production environment with verifiable matching source code and supporting infrastructure configurations or the actual production environment.

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

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

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

(a)   For Software that includes third party and open-source software, all included third party and open source software must be documented and the source supplier must be monitored by the Contractor for notification of identified vulnerabilities and remediation. SCA scans may be included as part of SAST and DAST scanning or employ the use of an SCA tool to meet the scanning requirements. These scans must be completed

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for all third party and open source software initially, for all updated third party and open source software, and for all third party and open source software in each major release and Contractor must provide the State with a vulnerability assessment after Contractor has completed the required scans if not provided as part of SAST and/or DAST reporting.

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

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

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

10.   **Infrastructure Scanning.**

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

11.   **Nonexclusive Remedy for Security Breach**.

11.1   Any failure of the 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.

SCHEDULE F - DISASTER RECOVERY PLAN
(Contractor's Disaster Recovery Plan is to be included as an attachment)

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SCHEDULE G – Transition In and Out