



**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 **2**  
 to  
 Contract Number **220000000860**

<b>CONTRACTOR</b>	DMT SOLUTIONS GLOBAL CORPORATION, DBA BLUECREST
	37 Executive Drive
	Danbury, CT 06810
	Jacob Halbur
	847-423-7882
	jacob.halbur@bluecrestinc.com
	VS0069487

<b>STATE</b>	Program Manager	Various	DTMB
	Contract Administrator	Alannah Doak (517) 230-9424 doaka@michigan.gov	DTMB

**CONTRACT SUMMARY**

**POSTAGE AND MAIL EQUIPMENT**

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
September 1, 2023	May 14, 2024	4 - 1 Year	May 14, 2024

PAYMENT TERMS	DELIVERY TIMEFRAME
Net 45 Days	N/A

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

**MINIMUM DELIVERY REQUIREMENTS**

N/A

**DESCRIPTION OF CHANGE NOTICE**

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	1 year	<input type="checkbox"/>		May 14, 2025
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$5,000,000.00	\$0.00	\$5,000,000.00		

**DESCRIPTION**

Effective 12/18/2023, the first option year available on this contract is hereby exercised. The revised contract expiration date is 5/14/2025.

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



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**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 **220000000860**

<b>CONTRACTOR</b>	DMT SOLUTIONS GLOBAL CORPORATION, DBA BLUECREST
	37 Executive Drive
	Danbury, CT 06810
	Jacob Halbur
	847-423-7882
	jacob.halbur@bluecrestinc.com
	VS0069487

<b>STATE</b>	Program Manager	Various	DTMB
	Contract Administrator	Alannah Doak (517) 230-9424 doaka@michigan.gov	DTMB

**CONTRACT SUMMARY**

**POSTAGE AND MAIL EQUIPMENT**

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
September 1, 2023	May 14, 2024	4 - 1 Year	May 14, 2024

PAYMENT TERMS	DELIVERY TIMEFRAME
	N/A

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

**MINIMUM DELIVERY REQUIREMENTS**

N/A

**DESCRIPTION OF CHANGE NOTICE**

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input type="checkbox"/>		May 14, 2024
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$5,000,000.00	\$0.00	\$5,000,000.00		

**DESCRIPTION**

Effective 12/4/2023, the following amendment is hereby incorporated into the contract: Change definition of "warranty period" from "ninety one year" to "one year" on page 10 of 19 of the participating addendum.

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



**STATE OF MICHIGAN PROCUREMENT**  
**DTMB Central Procurement Services**  
 320 S. Walnut Street, 2<sup>nd</sup> Floor, North  
 Lansing, Michigan 48933

**NOTICE OF CONTRACT**

NOTICE OF CONTRACT NO. **220000000860**  
 between  
 THE STATE OF MICHIGAN  
 and

<b>CONTRACTOR</b>	DMT Solutions Global Corporation, DBA BlueCrest
	37 Executive Drive
	Danbury, CT 06810
	Jacob Halbur
	847-423-7882
	Jacob.halbur@bluecrestinc.com
	VS0069487

<b>STATE</b>	Program Manager	Various	Agency Acronym
	Contract Administrator	Alannah Doak	DTMB
		Phone Number	
		Email Address	
		517-241-7000	
		DoakA@michigan.gov	

<b>CONTRACT SUMMARY</b>			
<b>DESCRIPTION: Postage and Mail Equipment</b>			
<b>INITIAL EFFECTIVE DATE</b>	<b>INITIAL EXPIRATION DATE</b>	<b>INITIAL AVAILABLE OPTIONS</b>	<b>EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW</b>
September 1, 2023	May 14, 2024	4, one-year	
<b>PAYMENT TERMS</b>		<b>DELIVERY TIMEFRAME</b>	
Net 45 Days		N/A	
<b>ALTERNATE PAYMENT OPTIONS</b>			<b>EXTENDED PURCHASING</b>
<input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>MINIMUM DELIVERY REQUIREMENTS</b>			
N/A			
<b>MISCELLANEOUS INFORMATION</b>			
This Contract is a result of the NASPO Master Agreement # CTR058808			
<b>ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION</b>			<b>\$5,000,000.00</b>

**FOR THE CONTRACTOR:**

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

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

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

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

**FOR THE STATE:**

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

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

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

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

**MAILING EQUIPMENT, SUPPLIES AND MAINTENANCE**  
Led by the **State of Arizona**

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Master Agreement #: **CTR058805**  
Contractor: **DMT SOLUTIONS GLOBAL CORPORATION D/B/A  
BLUECREST**  
Participating Entity: **STATE OF MICHIGAN**

This Participating Addendum is entered into by Contractor and Participating Entity (collectively, the "Parties").

**SCOPE AND PARTICIPATION:**

1. Scope:

- This Participating Addendum includes the entire scope of the products and services available through the Master Agreement referenced above.
- This Participating Addendum includes the entire scope of the products and services available through the Master Agreement referenced above, except as may be specified herein.

Any scope exclusions specified herein apply only to this Participating Addendum and shall not amend or affect other participating addendums or the Master Agreement itself.

2. Participation: This Participating Addendum covers participation of Participating Entity in the above-referenced Master Agreement between the State of Arizona and Contractor for Mailing Equipment, Supplies and Maintenance. This Participating Addendum may be used by all state agencies. In addition, this Participating Addendum also covers MiDeal members as set forth in Exhibit 1.-A. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

3. Term:

- This Participating Addendum shall become effective as of the date of the last signature below and shall terminate upon the expiration or termination of the Master Agreement, as amended, unless the Participating Addendum is terminated sooner in accordance with the terms set forth herein.
- This Participating Addendum shall become effective as of the date of the last signature below and shall terminate on [date], unless terminated sooner or otherwise amended in accordance with the terms set forth herein. Notwithstanding the previous, in no event shall the term of the Participating Addendum exceed the term of the Master Agreement, as amended.

4. Primary Contacts: The following (or their named successors) are the primary contact individuals for this Participating Addendum:



**MAILING EQUIPMENT, SUPPLIES AND MAINTENANCE**  
Led by the **State of Arizona**

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**CONTRACTOR: DMT SOLUTIONS GLOBAL CORPORATION D/B/A BLUECREST**

Sales Contact:	Susan Gabrielsen
Address:	37 Executive Drive, Danbury, CT 06810
Telephone:	914-262-3456
Fax:	N/A
Email:	Susan.Gabrielsen@bluecrestinc.com

Contract Admin:	Jacob Halbur
Address:	37 Executive Drive, Danbury, CT 06810
Telephone:	(847) 212-6890
Fax:	N/A
Email:	jacob.halbur@bluecrestinc.com

**PARTICIPATING ENTITY: State of Michigan**

Name:	Jared Ambrosier, Chief Procurement Officer
Address:	Elliott-Larsen, 320 Walnut St, 2 <sup>nd</sup> Fl, North Tower, Lansing, MI 48933
Telephone:	517-243-6238
Fax:	517-284-7097
Email:	ambrosierj@michigan.gov

**Participating Entity Modifications and Additions to the Master Agreement**

This Participating Addendum incorporates all terms and conditions of the Master Agreement as applied to the Participating Entity and Contractor.

This Participating Addendum incorporates all terms and conditions of the Master Agreement as applied to the Participating Entity and Contractor, **subject to the following limitations, modifications, and additions:**

**Exhibit # 1 to Participating Addendum for Michigan Additional Terms,**

**Exhibit 1-A to Participating Addendum- BlueCrest Equipment, Maintenance, Software, and Professional Services**

## **MAILING EQUIPMENT, SUPPLIES AND MAINTENANCE**

Led by the **State of Arizona**

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**Exhibit 1-B to Participating Addendum- Application Software Terms and Provisions**

**Exhibit 1-B to Participating Addendum Schedule 1- Third Party Content License Terms and Provisions**

**Exhibit 1-C to Participating Addendum- Professional Services License Terms and Provisions**

**Schedule A- Reserved**

**Schedule B- Reserved**

**Schedule C- Insurance Requirements**

**Schedule D- Reserved**

**Schedule E- Data Security Requirements for Purchases**

**Schedule F- Federal Provisions Addendum**

**Schedule G- Disaster Recovery**

Any limitations, modifications, or additions specified herein apply only to the agreement and relationship between Participating Entity and Contractor and shall not amend or affect other participating addendums or the Master Agreement itself.

5. Lease Agreements: Leasing is authorized by this Addendum.

If the State wishes to lease, it will use its own leasing company, which will be considered a separate contract outside the Participating Addendum. MiDeal members may use leasing companies of their own choosing, which will be considered a contract outside the Participating Addendum.

The BlueCrest product line is not available for an equipment rental program.

6. Subcontractors: All contractors, dealers, and resellers authorized to provide sales and service support in Participating Entity's state, as shown on Contractor's NASPO ValuePoint-specific webpage, may provide sales and service support to users of this Participating Addendum. Participation of Contractor's contractors, dealers, and resellers will be in accordance with the terms and conditions set forth in the Master Agreement.

7. Orders: Any order placed by Participating Entity or a Purchasing Entity for a product or service offered through this Participating Addendum shall be deemed to be a sale under the Master Agreement and subject to the terms of this Participating Addendum.

## **MAILING EQUIPMENT, SUPPLIES AND MAINTENANCE**

Led by the **State of Arizona**

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8. Price Agreement Number: All purchase orders issued under this Participating Addendum shall include the State's contract number: 220000000860 and the Lead State price agreement number: CTR058808.
9. Software license terms and conditions are set forth in Exhibit 1-B- Application Software Terms and Provisions.

### 10. ENTIRE AGREEMENT

This Participating Addendum together with all Schedules and Exhibits, and the Master Agreement together with its exhibits (collectively the "Contract") set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof.

If there is a conflict between documents, the order of precedence is: (a) first, Exhibit 1-A; (b) second, Schedule E – Data Security Requirements; (c) third, the Participating Addendum excluding all of its Exhibits and Schedules, ; (c) fourth, remaining Exhibits and Schedules to the Participating Addendum; and (d) fifth, the Master Agreement.. **NO TERMS ON CONTRACTOR'S INVOICES, ORDERING DOCUMENTS, WEBSITE, BROWSE-WRAP, SHRINK-WRAP, CLICK-WRAP, CLICK-THROUGH OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS PROVIDED WITH ANY OF THE CONTRACT ACTIVITIES, OR DOCUMENTATION HEREUNDER, EVEN IF ATTACHED TO THE 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 THE CONTRACT ACTIVITIES REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.**





**MAILING EQUIPMENT, SUPPLIES AND MAINTENANCE**  
Led by the **State of Arizona**

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IN WITNESS WHEREOF, the Parties have executed this Participating Addendum.

**PARTICIPATING ENTITY**

**CONTRACTOR**

Signature:	Signature:
Name:	Name: Susan Gabrielsen
Title:	Title: S.V.P. North America Sales
Date:	Date:

For questions regarding NASPO ValuePoint Participating Addendums, please contact the Cooperative Contract Coordinator team at [info@naspovaluepoint.org](mailto:info@naspovaluepoint.org).

Fully executed NASPO ValuePoint Participating Addendums must be submitted via email in PDF format to [pa@naspovaluepoint.org](mailto:pa@naspovaluepoint.org).

## **MAILING EQUIPMENT, SUPPLIES AND MAINTENANCE**

Led by the **State of Arizona**

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### **Exhibit 1-A to Participating Addendum-**

#### **BlueCrest Equipment, Maintenance, Software & Professional Services**

#### **1. SCOPE**

1.1 Contractor shall provide the On-Call Maintenance Services and On-Site Maintenance Services, as set forth in an Order, as described herein. Any capitalized term used herein without definition shall have meaning assigned to such term in the Master Agreement or the Participating Addendum, as applicable.

1.2 The On-Call Maintenance Services and On-Site Maintenance Services as described below, shall commence as of the date on which the Products have been delivered and installed ("Service Date"), if, and only if, Contractor has received a correct purchase order (and/or any other document required by Purchasing Entity for the issuance and payment of a Contractor invoice) from Purchasing Entity with respect to such annual On-Call Maintenance Services at least five (5) business days prior to the Service Date, and shall continue for an initial term of one (1) year. If Purchasing Entity orders On-Call Maintenance Services or On-Site Maintenance Services thereafter, such services shall continue for one year on the same conditions set forth immediately above.

#### **2. BASIC SERVICE SUPPORT**

2.1 Contractor shall perform the On-Call Maintenance Services on On-Site Maintenance Services using trained and qualified Client Service Representatives ("CSRs") and such maintenance services shall be performed in a good and workmanlike manner.

2.1.a For On-Site Maintenance Services, actual CSR work hours, will be as described herein, hereto. Contractor and Purchasing Entity will use commercially reasonable efforts to maintain CSR hours on a regular schedule. Changes in CSR work hours and additional charges therefor, subject to the terms stated herein, will be billed according to Contractor standard rates then in effect, unless otherwise mutually agreed upon in writing by Contractor and Purchasing Entity ten (10) working days prior to implementation.

2.2 On-Call and On-Site Maintenance Services will include reasonable remedial maintenance and preventative maintenance necessitated by normal usage. Remedial maintenance will include replacement of parts, excluding consumable parts, and machine enhancements. Parts provided hereunder shall be new or equivalent to new including refurbished parts.

2.3 Preventative maintenance will consist of inspecting, cleaning and periodically lubricating various components as well as replacing any worn parts. Contractor shall inform Purchasing Entity of the timing and nature of preventative maintenance required and Contractor and Purchasing Entity shall mutually agree on the scheduled time for CSRs to perform the preventative maintenance. Contractor shall use commercially reasonable efforts to conduct preventative maintenance as scheduled. Purchasing Entity shall make the Products reasonably available to Contractor for preventative maintenance.

2.4 Software and firmware maintenance shall be provided by Contractor pursuant to Section 3 of this document.

2.5 Notwithstanding anything in the Contract to the contrary, Contractor will not be responsible: (i) for maintaining any Product that Purchasing Entity has failed to operate under suitable temperature, humidity, line voltage, or any specified environmental conditions; (ii) if reasonable care is not used by Purchasing Entity in handling, operating, and maintaining a Product; (iii) if a Product is not used in accordance with the agreed applications and for the ordinary purpose for which it is designed; (iv) if the inability of any Product to perform is due to any act or failure to act on the part of Purchasing Entity, including without limitation, any alteration of or adding components to any Product; (v) unqualified operators' use of a Product; (vi) use of a Product in a manner not intended; (vii) use of a Product to process applications not previously approved in writing by Contractor; or (viii) use of materially damaged materials, such as paper or envelopes that are materially damaged. If Contractor performs any repairs or maintenance as a result of any of the foregoing, the Purchasing Entity shall pay Contractor at Contractor's normal rates in effect at such time. Purchasing Entity shall promptly notify Contractor of any unauthorized alteration of or addition to a Product that occurred after Purchasing Entity accepted the Product. Contractor will not be required to maintain Products that have become obsolete, either due to age, discontinuance of Product's manufacture, or irreparability. Contractor shall make recommendations to Purchasing Entity regarding the replacement or refurbishment of such obsolete Products.

2.6 Service outside of the contracted hours or beyond what is described herein will be provided at Contractor's rates in effect at such time.

## **MAILING EQUIPMENT, SUPPLIES AND MAINTENANCE**

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2.7 From time to time, Contractor may provide notice to Purchasing Entity of its election, in its sole discretion, to terminate support for certain hardware, software, servers and/or databases due to obsolescence, end of life or a third-party manufacturer's election to discontinue certain servers, platforms and/or software (collectively "Obsolescence"). In the event Purchasing Entity's support is terminated due to Obsolescence, Purchasing Entity will be provided a pro-rata refund for any amounts prepaid for On-Call Maintenance Services for the obsolete hardware or software. In the event of a termination due to Obsolescence, Purchasing Entity will be provided an option to replace the obsolete software, servers and/or databases with replacements that meet or exceed Purchasing Entity's original system requirements, provided; however, additional costs, including but not limited to installation and support fees associated with the new solution may apply. Parts and/or assemblies for the obsolete products described above or for products not sold as new will be provided only if available.

### **3. SOFTWARE SUPPORT**

3.1 Contractor shall provide to Purchasing Entity software maintenance services ("SMS") and database services ("DBS") for the Embedded Software.

3.2 Software maintenance for the Embedded Software will consist of fixes made from time to time ("Fixes").

Fixes to the Embedded Software may include all or part of the following:

- Fixes to previously reported "bugs" to the Embedded Software; and
- Technical improvements to the Embedded Software.

3.3 Purchasing Entity shall be advised of required Fixes made to the Embedded Software during the term. Fixes shall be made available to Purchasing Entity, for implementation by Purchasing Entity or Contractor using the method deemed most appropriate; however, installation of a Fix to Embedded Software which have been modified by Purchasing Entity or Contractor at Purchasing Entity's request may require additional modifications, for which there will be an additional charge according to Contractor's then current rates.

3.4 Upgrades and version releases to the Embedded Software may be issued periodically by Contractor, shall consist of additional and enhanced functions, may be available at an additional charge to the Purchasing Entity, and may be installed at Purchasing Entity's option. Upgrades incorporate functional and technical capability not provided in the last Version Release but deemed required prior to the next Version Release ("Upgrade(s)"). Version releases incorporate all of the Upgrades; including functionality changes, and Fixes which have been issued since the previous release ("Version Release"). Installation of an Upgrade or Version Release to Embedded Software that has been modified by Contractor at Purchasing Entity's request ("Modified Licensed Programs") may require additional modification, for which there will be an additional charge. All Version Releases, Upgrades, and Fixes provided under this Schedule shall be subject to the terms and conditions of the applicable agreement pursuant to which the original Embedded Software was licensed.

3.5 DBS will consist of distribution at no additional charge to Purchasing Entity of updates to the databases identified in the relevant purchase and/or license agreement; as such updates are made available by Contractor from time to time. DBS updates include postal or carrier rate changes, all zip or zone changes, and changes in service provided by carriers, provided that Contractor does not warrant the availability, accuracy or timely dissemination of non-Contractor originated source data incorporated in the databases.

3.6 Notwithstanding anything in the Agreement to the contrary, Contractor will not be responsible: (i) for maintaining any Embedded Software that Purchasing Entity has failed to operate properly on the approved platform; (ii) if the Embedded Software is not used in accordance with the agreed applications and for the ordinary purpose for which they are designed; (iii) if the inability of Embedded Software to perform is due to any act or failure to act on the part of Purchasing Entity, including without limitation, any alteration of or adding components to Embedded Software or failure to install updates, Version Releases, Upgrades or Version releases; (iv) use of the Embedded Software by untrained Purchasing Entity personnel; (v) use of the Embedded Software in a manner not intended; (vi) use of the Embedded Software to process applications not previously approved in writing by Contractor; (vii) if the Embedded Software has been operated with other media, not meeting or not maintained in accordance with the manufacturer's specifications as a result of Purchasing Entity's actions; or (viii) where Purchasing Entity's service issue results from a problem other than from the Embedded Software, Contractor Equipment, or any action or inaction of Contractor. If Contractor performs any SMS or DBS as a result of any of the foregoing, the Purchasing Entity shall pay Contractor at Contractor's normal rates in effect at such time. Contractor is not responsible for maintaining any third-party software and/or hardware that communicates or operates with the Embedded Software, unless such hardware and/or software was provided by Contractor. Purchasing Entity shall promptly notify Contractor of any known unauthorized alteration of or addition to the Embedded Software that occurred after Purchasing Entity accepted the Embedded Software.

## **MAILING EQUIPMENT, SUPPLIES AND MAINTENANCE**

Led by the **State of Arizona**

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3.7 If Purchasing Entity upgrades to a new release, i.e., major enhancements and/or new functionality of the Embedded Software licensed by Contractor, the SMS provided hereunder may be transferred to the new release at the then current subscription fee for the new release less credit for fees previously paid hereunder.

### **4. EXTRA MAINTENANCE SERVICES**

4.1 For Products added after the Service Date, Contractor will invoice Purchasing Entity for monthly maintenance charges on a *pro rata* basis.

4.2 If Purchasing Entity requests any On-Call Maintenance Services outside of defined service personnel hours (Monday through Friday 8:00am – 5:00pm ET excluding Contractor observed holidays), Contractor will invoice Purchasing Entity for additional fees that result from such services at its then current rates and Purchasing Entity acknowledges and agrees that it shall pay all such additional fees in accordance with the payment provisions of the Contract.

4.3 With respect to On-Site Maintenance Services, extended hours of coverage will also be invoiced by Contractor on a monthly basis. Purchasing Entity may, upon not less than seven (7) days' prior written notice, request Contractor to extend the hours during which maintenance services are available for equipment beyond the agreed maintenance hours ("Extended Hours of Coverage"). If Contractor agrees to provide Extended Hours of Coverage, Purchasing Entity will pay additional fees in accordance with the payment provisions of the Contract and at the rates mutually agreed to by Contractor and Purchasing Entity.

### **5. OUTAGES-**

5.1 For On-Call Maintenance Services:

5.1.a The CSR must be on site before the close of business of the day of the State's call for service, or within 4 hours at the start of the next business day. Once at the Purchasing Entity site, the CSR has sixty (60) minutes to diagnose the problem. Once the problem is diagnosed, a time estimate for resolution shall be provided to the Purchasing Entity.

5.1.b If the problem is not diagnosed within sixty (60) minutes, the CSR will escalate to a Region Technical Specialist ("RTS") and the service manager. The RTS shall try to diagnose the problem over the phone based on the symptoms described by the site CSR. A decision will be made by the RTS or senior CSR to go to the site if unresolved. The Purchasing Entity and service manager shall be notified of the status as well as the estimated time of arrival of the RTS or senior CSR.

5.1.c Once at the Purchasing Entity site, the RTS or senior CSR has sixty (60) minutes to diagnose the problem. If the senior CSR does not diagnose the problem, the Service Manager, and the Division Director shall be notified for the purpose of determining whether additional support is required.

5.1.d If parts are required for diagnoses, confirmation on parts availability must be made and the Purchasing Entity, as well as service management, must be informed.

5.2 For On-Site Maintenance Services:

5.2.a The appropriate CSR will promptly respond to any request for service received from Purchasing Entity during the agreed maintenance hours and record the service call in the Contractor service management system via a handheld device for any Outage (as defined below) of fifteen (15) minutes duration or longer. The Outage period will begin to run from the time the CSR receives proper notification thereof. For the purposes of this Agreement, "Outage" means a complete cessation of the Product's ability to perform its prescribed Applications due to software, hardware or mechanical failure.

5.2.b If the Outage extends beyond 2 hours, the CSR will contact the area Regional Technical Specialist ("RTS") for assistance. The RTS will provide telephone support as required in the determination of CSR and RTS.

5.2.c If the Outage extends beyond 4 hours, the RTS will contact the Service Manager and Division Technical Specialist ("DTS"). The Service Manager will review the Product's condition with the RTS, plan the necessary corrective action and notify Purchasing Entity as to the action being taken.

5.2.d If the Outage extends beyond eight hours, Contractor will notify the Division Services Director and will determine whether additional on-site support is required.



**MAILING EQUIPMENT, SUPPLIES AND MAINTENANCE**

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5.2.e If the Outage extends beyond 12 hours, a Vice President responsible for client service will be notified and appropriate additional on-site support will be supplied at no expense to Purchasing Entity.

**MAILING EQUIPMENT, SUPPLIES AND MAINTENANCE**  
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**Exhibit 1-B to Participating Addendum**  
**Application Software Terms and Provisions**

Contractor shall provide Application Software to Purchasing Entity on the following terms and conditions. Any capitalized term used herein without definition shall have meaning assigned to such term in the Master Agreement or the Participating Addendum, as applicable.

**1. Definitions**

*"Application Software"* means the application software identified in the Order.

*"Client"* means Participating Entity or Purchasing Entity, as applicable under the circumstances.

*"Computer"* means the server or computer identified in an Order on which Application Software is authorized to be installed and used. If no specific computer is identified in the Order, then Computer will be any single physical server.

*"Documentation"* means the current technical and user guides for the Application Software, Support Guidelines and other specifications provided to Purchasing Entity by Contractor. The Documentation may be modified from time-to-time to incorporate Enhancements.

*"Enhancements"* means any updates, upgrades, modifications, new releases and corrective programming to the Application Software that are provided as part of Maintenance Services.

*"Maintenance Services"* means the maintenance services set forth in Section 6 of these Application Software Terms and Provisions.

*"Service Provider"* means that Purchasing Entity uses the Application Software to perform services, including, to: (i) verify address information and/or provide postal-related services; (ii) provide analytics; (iii) develop, design, archive, process and/or print business documents; (iv) merge or convert print stream data; (v) append geographic coordinates or demographics to address records or other data; and/or (vi) perform other data processing services; for entities other than Purchasing Entity, such as an affiliate.

*"Transaction"* means a record or user query that is submitted to the Application Software.

*"User"* means an individual authorized by Purchasing Entity to use the Application Software in accordance with the Agreement regardless of whether the individual is actively using the Application Software at any given time.

*"Warranty Period"* means the ninety one year period following initial delivery of the Application Software.

## **MAILING EQUIPMENT, SUPPLIES AND MAINTENANCE**

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**2. License Grant.** In consideration of the fees paid by Purchasing Entity to Contractor, Contractor hereby grants to Purchasing Entity a non-exclusive, non-transferable and non-sublicensable license to use the Application Software during the license term set forth in the Order in accordance with the Agreement. The grant of rights to the Application Software is not a sale of the Application Software. Contractor and its third-party licensors reserve all rights not expressly granted by this Agreement.

**3. Use of Application** During the license term set forth in the Order, Purchasing Entity is permitted to use the Application Software only for its own internal business purposes. The Application Software will be installed only at the installation site on the Computer or in a virtual environment and utilizing the operating system set out therein. Purchasing Entity is permitted remote access to the Application Software unless otherwise prohibited in the Order. Use of the Application Software as a Service Provider is prohibited unless otherwise authorized in the applicable Order. Additional terms of authorized use are as set forth in the applicable Order and may include limitations on: (i) the number of Users; (ii) the applications authorized to access the Application Software; and (iii) the number of Transactions processed using the Application Software. Application Software licensed for desktop use by a specific number of Users may be installed on the number of devices equal to the specific number of User licenses purchased or may be installed on multiple devices so long as the number of individual Users does not exceed the number of licenses purchased.

Client may, upon (i) utilize the Application Software with a different operating system; (ii) process additional Transactions; or (iii) add Users. If the Installation Site is located in the United States, such Installation Site may be changed to another location within the United States upon written notice to Contractor, but may not be changed to a location outside the United States without Contractor's prior written consent. If the Installation Site set forth in the Order is located outside of the United States, such Installation Site may be changed to another location within the original country upon notice to Contractor, but may not be changed to a different country without Contractor's prior written consent

Client may make a reasonable number of copies of the Application Software and Documentation solely for back up or disaster recovery purposes. Client must reproduce all copyright, trademark, trade secret and other proprietary notices in such copies. Client shall record the number and location of all copies of the Application Software and Documentation and take steps to prevent any unauthorized copying. The back up or disaster recovery copies can only be used to perform disaster recovery testing or if the Computer or virtual environment becomes inoperative. Except to perform disaster recovery testing in accordance with Client's disaster recovery procedures, Client is not permitted to use the back up or disaster recovery copies of the Application Software for production or testing/development concurrently with the production or testing/development copies of the Application Software

Client may install, for a period not to exceed fifteen (15) days from date of installation, Enhancements in a test environment for the sole purpose of determining if such Enhancements will be deployed by Client in the licensed production environment. Upon conclusion of such period, Client will install and use only the number of production and test/development copies of the Enhancements set forth in the Order.

Client may permit its third party contractors to access and use the Application Software solely on behalf of, and for the benefit of, Client, so long as: (i) contractor agrees to comply fully with these License Terms and Provisions and the applicable Order(s) as if they were Client; (ii) Client remains responsible for each contractor's compliance with these License Terms and Provisions and the applicable Order(s) and any breach thereof; (iii) any User limitation includes User licenses allocated to contractors; and (iv) the contractor is not, in Contractor's reasonable opinion, a competitor of Contractor. All rights granted to any contractor shall terminate immediately upon the earlier of: (A) conclusion of the services rendered to Client that gives rise to such right; and (B) expiry or termination of the applicable license term. Upon termination of such rights, Client shall ensure that contractor immediately ceases all use of the Application Software, un-installs and destroys all copies of the Application Software and any other Contractor information in contractor's possession or control, and Client must certify in writing upon Contractor's request that it is in compliance with this Section.

**4. Restrictions.** Client will not: (i) make derivative works of the Application Software; (ii) reverse engineer, decompile or disassemble the Application Software or any portion thereof except as is permitted by applicable law; (iii) make copies of the Application Software or Documentation except as otherwise authorized in these Application Software Terms and Conditions, (iv) disclose the Application Software to any third party except as permitted by the Contract or as required by law (v) sublicense, rent, lease, lend, or host the Application Software to or for other parties; (vi) attempt to unlock or bypass any initialisation system, encryption methods or copy protection devices in the Application Software; (vii) modify, alter or change the Application Software; (viii) knowingly or intentionally alter, remove or obscure any patent, trademark or copyright notice in the Application Software; or (ix) use components of an Application Software independent of the Application Software they comprise.

**5. Intellectual Property.** Client hereby acknowledges and agrees that Contractor and its licensors are the sole and exclusive owners of (i) all right, title and interest in and to the Application Software, including all intellectual property rights relating thereto, (ii) any derivatives, modifications, improvements, enhancements, or extensions to the Application Software, whenever developed, created, authored, conceived, reduced to practice or acquired by Contractor or its licensors, and (iii) any and all suggestions, feedback,

## **MAILING EQUIPMENT, SUPPLIES AND MAINTENANCE**

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recommendations and other comments made to Contractor or its licensors that are incorporated into the Application Software and/or Documentation. Client further acknowledges and agrees that it shall have no rights in or to the Application Software or any intellectual property rights relating thereto other than the right to use them in accordance with the terms of the license(s) granted under the Agreement.

**6. Maintenance Services.** Contractor shall provide Maintenance Services for the Application Software as set forth in the applicable Order and for the fees set forth therein.

Maintenance Services consist of: (i) telephone support to assist Client with the use of the Application Software in accordance with the support guidelines; (ii) Enhancements provided to other Clients of the Application Software who have paid for Maintenance Services for the current maintenance term; and (iii) the correction of errors or non-conformities with the Application Software to perform as set out in the Documentation in accordance with Contractor's published support guidelines. Support will be provided to the limited number of contacts selected by Client in accordance with the support guidelines. If Contractor is unable to correct a reported error or non-conformity in the Application Software that is classified in Contractor's published Support Guidelines as a critical or high severity level problem within thirty (30) days following notice from Client or an additional period of time reasonably agreed to by the parties, Client may terminate Maintenance Services for such Software and receive, as its exclusive remedy, a pro-rata refund of the fees paid for Maintenance Services for the balance of the existing maintenance term.

7. [Reserved]

**8. Training.** Contractor will provide Client with the training set forth in an Order, for the fees set forth in the Pricing Schedule. Unless otherwise set forth in the Order, training will be provided remotely or at a Contractor training facility. If an Order provides for training at Client's location, Client will pay for all reasonable travel-related expenses incurred by Contractor in the performance of the training. No refunds will be issued for any trainings Client fails to attend, or if intended to be performed at a Client location, to be scheduled and hosted by Client, by the expiration date.

**9. Verification.** Upon forty-five (45) days prior written notice, Contractor may verify Client's compliance with the Agreement at all locations and for all environments in which Client uses the Application Software. Such verification will take place no more than one (1) time per twenty-four (24) month period during normal business hours in a manner which minimizes disruption to Client's work environment. Contractor may use an independent third party under obligations of confidentiality to provide assistance. Contractor will notify Client in writing if any such verification indicates that Client has used the Application Software in excess of the use authorized by the Agreement or Order. If Contractor determines that there is excess use, to the extent Client agrees with such conclusion in its good faith and reasonable discretion, Contractor may invoice Client for the Maintenance Service fees related to any excess use as agreed by Client, and Client will pay the resulting invoice as set forth in the Contract. Payment under this provision is Contractor's sole and exclusive remedy for any excess use.

10. [Reserved]

**11. Warranties**

Contractor represents and warrants that during the Warranty Period the Application Software will perform all material functions set out in the Application Software's Documentation and otherwise operate in substantial accordance with such Documentation. If, during the Warranty Period the Application Software fails to comply with this warranty, Client must notify Contractor in writing of any alleged errors or non-conformities, in which event Contractor will have thirty (30) days from receipt of such notice or an additional period of time as reasonably agreed to by the parties to correct such errors or non-conformities in accordance with the support guidelines. If Contractor is unable to timely correct such errors or non-conformities, Client may elect to terminate the license to the non-conforming Application Software. If Client terminates the license to the non-conforming Application Software during the Warranty Period in accordance with this Section, Client will, as its remedy, receive a refund of all fees previously paid for such non-conforming Application Software.





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(b) CONTRACTOR DOES NOT WARRANT THAT THE APPLICATION SOFTWARE WILL OPERATE ERROR-FREE OR THAT CONTRACTOR WILL CORRECT ALL ERRORS (INCLUDING, FOR SOFTWARE, THOSE DESIGNATED AS MEDIUM OR LOW SEVERITY LEVEL ISSUES). EXCEPT AS EXPRESSLY STATED IN THESE TERMS AND PROVISIONS, THE APPLICATION SOFTWARE IS PROVIDED "AS IS" AND CONTRACTOR, ON BEHALF OF ITSELF AND ITS THIRD PARTY SUPPLIERS AND LICENSORS, DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE APPLICATION SOFTWARE AND SERVICES FURNISHED UNDER THE AGREEMENT, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, RELIABILITY, COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE IN TRADE

12. [Reserved]

13. [Reserved]

14. [Reserved]

**15. Compliance with Laws.** Client will, at all times, exercise its rights and perform its obligations under this Agreement in compliance with all , export control laws. In addition, Client agrees not to export, re-export, or provide the Application Software to: (i) any country to which the United States has embargoed goods; (ii) any person on the U.S. Treasury Department's list of Specially Designated Nationals; (iii) any person or entity on the U.S. Commerce Department's Denied Persons List; or (iv) any person or entity where such export, re-export or provision violates any U.S. Export control or regulation.

**16. Third Party Content Applicable to Sortation Application Software.** Various third party software and other documentation ("Third Party Content") may have been incorporated into the Application Software by Contractor under permission from Contractor' licensors and suppliers. Certain Third Party Content provided hereunder requires Client be certified by the United States Postal Services. Client's failure to obtain such certification shall not impact Client's obligation to pay to Contractor fees due hereunder. In addition, certain Third Party Content requires Client to agree to additional terms of use set forth on Schedule 1 hereto.

## **MAILING EQUIPMENT, SUPPLIES AND MAINTENANCE**

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Schedule 1

To

**Exhibit 1-B- Application Software License Terms and Provisions**

**Third Party Content**  
**License Terms & Provisions**

**PARASCRIPT:**

Software provided by Parascript and/or its successors and assigns that has been incorporated into the Application Software is subject to the following additional terms and conditions.

If AddressScript™ software is licensed hereunder, advance purchase of blocks of clicks (11-digit finalized answers) is required. Contractor shall ensure that Purchasing Entity's initial purchase of clicks is set forth in the Order.

If ASV software is licensed hereunder:

- A one (1) year term license has a pre-determined volume cap. Volumes for one (1) year licenses expire at the end of each term or when the volume count during the term is exceeded, whichever occurs first.
- A three (3) year term license has a pre-determined annual volume cap and automatically resets itself on the anniversary date to the same volume each year for a total of three years. Volumes expire at the end of each twelve (12) month period or if volume count during applicable twelve (12) month period is exceeded, whichever occurs first.
- Optimization, Replacement and New End user Application:
  - "Optimize" shall mean any change, alteration, modification, update, upgrade, repair, revision, release, performance improvement, addition of a new feature, or replacement.
  - In the event Purchasing Entity, for any reason, Optimizes or replaces a personal, non-networked computer on which the software is installed, Purchasing Entity may transfer the software to the Optimized personal, non-networked computer at no additional cost provided all of the following occur: (a) the Purchasing Entity shall be the same; and (b) no Optimization or replacement has been made to ReliaVote.
- Parascript shall have no liability for any damages resulting from loss of data or profits, or for any special, indirect, incidental, punitive, or consequential damages arising out of or in connection with the use of ASV;
- Purchasing Entity shall not (i) reverse engineer, decompile or otherwise attempt to derive the source code for ASV; (ii) combine ASV with any software that could alter Parascript's licensing terms; (iii) remove any ASV identification, copyright legend or other notices; (iv) modify or create derivative works based on ASV; (v) issue, sublicense, sell, grant, or in any way transfer a license type or rights to use ASV that is different than the license type or rights issued by Parascript for ASV; (vi) use a perpetual ASV license as a recurring revenue service or to provide services to any third party or for the benefit of any third party (examples include without limitation: engaging in business process outsourcing, acting as a service bureau, charging a subscription or click fee for processing images or accessing ASV; (vii) permit third party access to ASV API (application programming interface) unless that party is the Purchasing Entity's outside developer who has agreed in writing to comply with all applicable licensing terms and restrictions; (viii) use ASV after its license term ends; (ix) use a non-production license in a production environment; (x) access or permit a third party access to API Documentation; and/or (xi) issue, sublicense, sell, grant, or in any way transfer a license or rights to use ASV, or charge a subscription fee to access or use ASV;
- ASV is provided "AS IS";

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- Parascript owns ASV and Parascript trademarks, and all rights not expressly granted by Parascript are reserved; and
- ASV must be deleted at the end of the license term.

### **RAF CORPORATION:**

Software provided by RAF Corporation and/or its successors and assigns that has been incorporated into the Application Software is subject to the following additional terms and conditions.

Dongles. RAF Corporation reserves the right to include a deactivation device (“dongle”) in each copy of the Argosy Post Software. If included, the dongle will prevent the use of such Argosy Post Software until RAF furnishes the key which will activate the Argosy Post Software. Dongles are the property of RAF Corporation and are used to prevent unauthorized copying or use of the Argosy Post Software. Dongles may not be transferred by Purchasing Entity unless the corresponding software is transferred under the terms of this Agreement. Dongles remain the property of RAF and must be returned by Purchasing Entity to Licensor upon expiration/termination of each Purchasing Entity account.

Directories. Due to United States Postal Service regulations, Purchasing Entity, depending on which Application Software is being used, must use a current Zip+4 directory (“Directory”) to operate the Application Software within the mail transport product. The Application Software will not operate without a current Directory which is compatible with the Application Software. Contractor, on behalf of its third party licensor and/or its successors and assigns, supplies updated Directories on an annual basis to Purchasing Entities for whom such service is subscribed and for whom the annual software maintenance fee is timely paid. In order to continue receiving the Directory updates, the software maintenance must be renewed each year and the annual software maintenance fee paid to Contractor. During the term of this Agreement, Contractor will supply Directory updates to Purchasing Entity for such periods for which the applicable annual subscription fees are received by Contractor. Payment of the applicable annual subscription fees for each license is required to operate the Application Software within the licensed application.

### **BCC SOFTWARE, LLC:**

Software provided by BCC Software, LLC and/or its successors and assigns that has been incorporated into the Application Software is subject to the following additional terms and conditions.

- Purchasing Entity agrees to use the BCC software only within the United States, its territories and possessions for the purpose of improving business delivery addresses in multi- occupation buildings for use on letters, flats, postcards, packages, leaflets, magazines, advertisements, books, other printed material and any other item to be delivered by the United States Postal Service (USPS);

- US Postal Service Related Services (eg; CASS, NCOALink, DSF<sup>2</sup>).

(i) BCC Software is a non-exclusive licensee of the United States Postal Service’s (“USPS”) NCOALink database (“NCOA Database”). The information contained in the NCOA Database is regulated by the Privacy Act of 1974 and may be used only to provide a mailing list correction service for lists that will be used for preparation of mailings. If Purchasing Entity receives all or a portion of the NCOA Database in connection with its use of the Application Software, Purchasing Entity shall not use such information for any purpose other than mail list processing services. Prior to obtaining or using information from the NCOA Database, Purchasing Entity shall complete, execute and submit to Licensor the NCOA Processing Acknowledgement Form.

(ii) Further, if Purchasing Entity resides outside the United States, Purchasing Entity shall obtain the proper certifications from the USPS for NCOALink processing. Licensor is under no obligation to provide the mail list processing services to Purchasing Entity unless Purchasing Entity has obtained the proper certifications from the USPS.

- DMA Suppression. Services for DMA Suppression is understood to mean flagging consumers names from marketing lists for the purpose of suppressing them with such information used for no other purpose. Purchasing Entity understands that the DMAchoice Services are intended exclusively for Purchasing Entity’s own use and Purchasing Entity shall not disseminate, sublet, resell, reproduce, transfer or republish the DMAchoice list in any medium in any manner whatsoever.

## **MAILING EQUIPMENT, SUPPLIES AND MAINTENANCE**

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- Deceased Suppression. Services for deceased individual suppression is understood to mean matching the records from Purchasing Entity's or Purchasing Entity's customers' provided file to identify those individuals within such files who are deceased, with such information to be used for the sole purpose of deleting such deceased individuals from any list used for solicitation or any other external purpose. Purchasing Entity shall, and shall require its customers, not use the information provided from such Service for any other purpose including, but not limited to, promotions to surviving household members, or any other type of marketing or promotion.

**PURCHASING ENTITY SHOULD NOT TAKE ANY ADVERSE ACTION AGAINST ANY INDIVIDUAL WITHOUT FURTHER INVESTIGATION TO VERIFY THE DEATH LISTED.**

- Prison Suppression. Services for prison individual suppression is understood to mean matching the records from Purchasing Entity's or Purchasing Entity's customers' provided file to identify those individuals within such files, who are incarcerated in the U.S., Canada and U.S. Territories, with such information to be used for the sole purpose of deleting such incarcerated individuals from any list used for solicitation or any other external purpose. Purchasing Entity shall not, and shall require its customers to not, use the information provided from such Service for any other purpose.

- BCC Software reserves the right to modify or discontinue any mail list processing services with or without notice to Purchasing Entity. Neither BCC Software nor Licensor shall be liable to Purchasing Entity should such right to modify or discontinue any of the mail list processing services be exercised. Further BCC Software or Licensor may, from time to time, impose restrictions on the use of the mail list processing services as a result of changes in the law, limitations placed on BCC Software or Licensor from third parties or their respective licensors, which may limit Purchasing Entity's access to some or all of the data provided through the mail list processing services.

- Purchasing Entity understands and acknowledges that the USPS reserves the right to require BCC Software or Licensor to suspend Purchasing Entity's ability to perform mailing list processing. Neither BCC Software nor Licensor will be liable or responsible for any decision the USPS makes in canceling Purchasing Entity's mailing list processing, including, but not limited to, arbitrating the cancellation decision on Purchasing Entity's behalf. In the event the USPS suspends processing, (i) Purchasing Entity shall not be entitled to any refund or credit from Licensor; and, (ii) Licensor will discontinue providing the mail list processing services to Purchasing Entity.

- The USPS is the owner of numerous trademarks, including but not limited to: United States Postal Service(R), Postal Service(TM), Post Office(TM), United States Post Office(R), the Eagle logo, ZIP + 4(R), CASS(TM), CASS Certified(TM), DPV(TM), eLOT(TM), RDI(TM), LACSLink(TM), NCOALink(TM), SuiteLink(TM).

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**Exhibit 1-C to Participating Addendum**  
**Professional Services License Terms and Provisions**

Contractor will provide the Professional Services set forth in the applicable Order. Any capitalized term used herein without definition shall have meaning assigned to such term in the Contract. Any capitalized term used herein without definition shall have meaning assigned to such term in the Master Agreement or the Participating Addendum, as applicable.

**1. Definitions**

"Affiliate" means an entity that Controls, is Controlled by or is under common Control with Purchasing Entity;

"Control" means the ownership of more than fifty percent (50%) of an entity's stock or other voting interest;

"Deliverable(s)" means any computer software, written documentation, reports or materials developed by Contractor specifically for Purchasing Entity pursuant to the Order;

"Services" means the professional services to be performed by Contractor as described in the Order; and

"Warranty Period" means the thirty (30) day period following completion of the Services.

**2. Services.**

- (a) Contractor will perform the Services in accordance with this Agreement and the Order. Contractor is not obligated to provide any Services unless set out in the Order. Unless otherwise set out in the Order or as agreed to by the parties, Contractor will commence performance of the Services fifteen (15) business days following execution of the Order and the Services will be performed at Contractor's offices. Unless otherwise stated in the Order, Services will be performed and billed in contiguous eight (8) hour increments. Changes or delays in the work schedule originating with Purchasing Entity are subject to the project change procedure and may result in an increase in fees.
- (b) For a time and materials engagement, Contractor estimates that the Services will be completed in approximately the number of hours set out in the Order. Contractor does not represent, however, that the Services will be completed within the number of hours specified therein. Any estimates provided in the Order, including expected hours to complete the Services and any timeline provided by Contractor, are based on known functional requirements and technical environments as of the effective date of the Order.
- (c) Contractor grants Purchasing Entity a non-exclusive, non-transferable, royalty-free, perpetual license to use the Deliverables on behalf of and for the benefit of Purchasing Entity. Contractor retains all right, title and interest to the Deliverables except for those rights expressly granted to Purchasing Entity in the applicable Order and reserves all rights not otherwise expressly granted herein. Deliverables and Services are deemed accepted upon delivery unless otherwise set forth in an Order.

**3. Fees; Expenses.**

## **MAILING EQUIPMENT, SUPPLIES AND MAINTENANCE**

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(a) Fees. Fees will be invoiced to Purchasing Entity based on one of the following billing options, as indicated in the Order:

(i) Time and Materials: For engagements with a time and materials billing schedule, invoices will be issued monthly in arrears as Services are performed, based on the hourly or daily rate set forth in the Order or other executed order document. If a minimum number of hours are indicated on the Order ("Minimum Hours"), Purchasing Entity will pay for and permit Contractor to perform the indicated number of Minimum Hours. Should any Minimum Hours not be performed within ninety (90) days of the effective date of the Order due to delay, unavailability, or other reason within Purchasing Entity's control, Purchasing Entity will promptly pay the fees for such Minimum Hours upon receipt of an invoice by Contractor, which will then be credited against the balance of fees due for completed Services as they are performed. If Contractor performs Services at Purchasing Entity's request on a weekend or federal holiday (for the country where the Services are being performed or if off-site the country where the Contractor resources are performing the Services), Purchasing Entity will pay Contractor one and a half (1.5) times the hourly or daily rate for all Services performed on such weekend or federal holiday.

(ii) Retainer Hours: Invoices will be issued to Purchasing Entity based on the number of hours or days indicated as Retainer Hours prior to commencement of any Services, based on the rates set forth in the Order or other executed order document. Retainer Hours are then allocated to Services performed upon execution until the Retainer Hours are depleted. All Retainer Hours will be consumed in eight (8) hour increments and must be used within twelve (12) months of the effective date of the original Order purchasing the Retainer Hours. If Purchasing Entity fails to use the Retainer Hours within such time period, Contractor will not refund the unused pre-paid fees and will be under no obligation to perform the Services.

(iii) Fixed Cost: Invoices will be issued upon delivery of milestones, or in accordance with a billing schedule set forth in the Order or other executed order document.

(b) . . .

(c) Contractor will provide Purchasing Entity with a monthly project status report accounting for the number of hours of Services performed in the prior month, and the expenses incurred in performance of the Services.

### **4. Purchasing Entity Obligations.**

(a) Purchasing Entity will provide any assistance reasonably required by Contractor to perform the Services, including timely review of plans and schedules for the Services and reasonable access to Purchasing Entity's offices for Services performed onsite.

(b) Purchasing Entity will designate a project manager for the Services. The project manager will have the authority to make decisions on behalf of Purchasing Entity with respect to changes in the Services, resource allocation, expenditures, resolution of issues, scope changes and other matters involving the Services.

(c) Purchasing Entity will maintain a back-up of any data or data files provided to Contractor.

(d) Purchasing Entity will be responsible for securing all licenses for third party technology necessary for Contractor to perform the Services (including the right for Contractor to use such technology), and will be responsible for the performance of any third-party providing goods or services to Purchasing Entity related to the Services, including such third party's cooperation with Contractor.

### **5. Warranty.**

(a) The Services will be performed in a professional manner in accordance with generally accepted industry standards for the software consulting industry. Contractor will use reasonable commercial efforts to complete the Services in accordance with the Order. If the Services fail to comply with this warranty during the Warranty Period, Purchasing Entity will promptly notify Contractor in writing specifying in reasonable detail any alleged non-conformities in the Services. Upon such notice, Contractor will, as Purchasing Entity's remedy, promptly re-perform any such Services in accordance with the Order and this Agreement.



**MAILING EQUIPMENT, SUPPLIES AND MAINTENANCE**

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- (b) THE WARRANTIES SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE AND CONTRACTOR DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING OR COURSE OF PERFORMANCE

# EXHIBIT 1 TO STATE OF MICHIGAN PARTICIPATING ADDENDUM TO MASTER AGREEMENT # CTR058805 - MICHIGAN ADDITIONAL TERMS

This **Contract** is agreed to between the State of Michigan (the “**State**”) and DMT Solutions Global Corporation (d/b/a BlueCrest, the “**Contractor**”), a Delaware corporation This Contract is effective on September 1, 2023 (“**Effective Date**”), and unless terminated, will expire on May 14, 2024 (the “**Term**”).

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

The parties agree as follows:

## 1. Definitions

- (1) “**Documentation**” means all user manuals, operating manuals, technical manuals and any other instructions, specifications, documents or materials, in any form or media, that describe the functionality, installation, testing, operation, use, maintenance, support, technical or other components, features or requirements of the Equipment, Software or other Contract Activities.
- (2) “**Equipment**” means the items described or identified in the Pricing Schedule, together with any and all additions, modifications, attachments, accessions, substitutions, replacements and parts thereof.
- (3) “**Services**” means all services available under the Master Agreement, including, without limitation, preventive maintenance, repair service, call center and customer service related services, and software maintenance and support, software consulting as defined in this Contract.
- (4) “**Software**” means the Embedded Software, Application Software, and any other software available for purchase or license under the Master Agreement.

## 2. Duties of Contractor. Contractor must provide the Services and Equipment, and Software (the “**Contract Activities**”) in accordance with the requirements of this Contract.

Contractor must furnish all labor, equipment, materials, and supplies (excluding consumable parts and supplies) necessary for the performance of the Contract Activities unless otherwise specified in Schedule A.



For each Equipment delivered to the State, Contractor shall make available documentation describing in detail the Equipment. Such documentation can be provided to the State in electronic form or via a weblink.

Contractor must: (a) perform the Contract Activities in a timely, professional, safe, and workmanlike manner consistent with standards in the trade, profession, or industry; (b) meet or exceed the performance and operational standards, and specifications of the Contract; (c) provide all Contract Activities in good quality, with no material defects; (d) not knowingly or unreasonably interfere with the State’s operations; (e) obtain and maintain all necessary licenses, permits or other authorizations necessary for the performance of the Contract; (f) reasonably cooperate with the State, including the State’s quality assurance personnel, and any third party to achieve the objectives of the Contract; (g) return to the State any State-furnished equipment or other resources in the same condition as when provided when no longer required for the Contract; (h) assign to the State any claims resulting from state or federal antitrust violations to the extent that those violations concern materials or services supplied by third parties toward fulfillment of the Contract; (i) and comply with all State physical and IT security policies and standards, which will be made available upon request, applicable to the Contract Activities ). Any breach under this paragraph is considered a material breach.

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

- 3. 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:
<b>See Contract Administrator information shown below.</b>	DMT Solutions Global Corporation 37 Executive Drive Danbury, Connecticut 06810 Attn: Jacob.halbur@bluecrestinc.com Attn: legal@bluecrestinc.com

- 4. Contract Administrator.** The Contract Administrator, or the individual duly authorized for each party, is the only person authorized to modify any terms of this Contract, and approve and execute any change under this Contract (each a “Contract Administrator”):

State:	Contractor:
Alannah Doak Elliott-Larsen, 320 Walnut St, 2nd Fl, North Tower Lansing, MI 48933 Doaka@michigan.gov (517) 230-9424	Susan Gabrielsen DMT Solutions Global Corporation 37 Executive Drive Danbury, Connecticut 06810 Susan.gabrielsen@bluecrestinc.com

5. **Program Manager.** The Program Manager for each party will monitor and coordinate the day-to-day activities of the Contract (each a “**Program Manager**”):

State:	Contractor:
Various - See Contract Cover Page	Jacob Halbur DMT Solutions Global Corporation 37 Executive Drive Danbury, Connecticut 06810 Jacob.halbur@bluecrestinc.com

6. **Performance Guarantee.** Contractor must at all times have financial resources sufficient, in the reasonable and good faith opinion of the State, to ensure performance of the Contract.

7. **Insurance Requirements. See Schedule C.**

8. **Administrative Fee and Reporting** Contractor must pay an administrative fee of 1% on all payments made to Contractor under the Contract including transactions with the State (including its departments, divisions, agencies, offices, and commissions), MiDEAL members, and other states purchasing under the Contract (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.

9. **Extended Purchasing Program.** This contract is extended to MiDEAL members. MiDEAL members include local units of government, school districts, universities, community colleges, and nonprofit hospitals. A current list of MiDEAL members is available at [www.michigan.gov/mideal](http://www.michigan.gov/mideal).

Upon written agreement between the State and Contractor, this contract may also be extended to: (a) other 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.

**10. Relationship of the Parties.** The relationship between the parties is that of independent contractors. Contractor, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the State, is responsible for the payment of wages, benefits and taxes of Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor. Neither party has authority to contract for nor bind the other party in any manner whatsoever.

**11. A. Intellectual Property Rights.** If any Statement of Work or Order requires Contractor to create any Contract Activities solely and specifically for the State, Contractor hereby acknowledges that the State is and will be the sole and exclusive owner of all right, title, and interest in such specific Contract Activities and all associated intellectual property rights, if any. Such Contract Activities are works made for hire as defined in Section 101 of the Copyright Act of 1976. To the extent any such Contract Activities created solely and specifically for the State and related intellectual property do not qualify as works made for hire under the Copyright Act, Contractor will, and hereby does, immediately on its creation, assign, transfer and otherwise convey to the State, irrevocably and in perpetuity, throughout the universe, all right, title and interest in and to the Contract Activities, including all intellectual property rights therein. Notwithstanding the foregoing, nothing in the Contract shall be deemed to assign or transfer ownership by Contractor of any of its Intellectual Property Rights (as hereinafter defined). "Intellectual Property Rights" means (i) any patent, copyright, trademark or trade secret, or any other intellectual property, moral right, or other proprietary right, (ii) any derivatives, modifications, improvements, enhancements, substitutions, or extensions thereof, whenever developed, created, authored, conceived, reduced to practice or acquired, and (iii) except with respect to the following received from the State, any and all suggestions, feedback, recommendations and other comments with respect thereto, whenever provided, delivered or otherwise conveyed, . For the avoidance of doubt, in no event shall any Contract Activity that is a work made for hire or otherwise to be transferred or conveyed to the State include any of Contractor's Intellectual Property Rights. The State hereby grants Contractor a perpetual, irrevocable, worldwide license to any and all suggestions, feedback, recommendations and other comments with respect to Contractor's Intellectual Property, whenever provided, delivered, or otherwise conveyed, which includes the right to use, distribute, license, sell and otherwise commercialize in any manner anonymized (i.e., not attribute any such suggestions, feedback, recommendations and other comments to the State) suggestions, feedback, and recommendations without payment to the State.

**B. License Grant by Contractor - See Exhibit 1-B- Application Software Terms and Provisions**

**12. Subcontracting.** Contractor may not delegate any of its obligations under the Contract without the prior written approval of the State. Contractor must notify the State at least 90 calendar days before the proposed delegation and provide the State

any information it requests to determine whether the delegation is in its best interest. If approved, Contractor must: (a) be the sole point of contact regarding all contractual matters, including payment and charges for all Contract Activities; (b) make all payments to the subcontractor; and (c) incorporate the terms and conditions contained in this Contract in any subcontract with a subcontractor. Contractor remains responsible for the completion of the Contract Activities, compliance with the terms of this Contract, and the acts and omissions of the subcontractor. The State, in its sole discretion, may require the replacement of any subcontractor.

- 13. Staffing.** The State's Contract Administrator may, in its good faith, reasonable discretion, require Contractor to remove or reassign personnel providing services by providing a notice to Contractor.
- 14. Background Checks.** Pursuant to Michigan law, all agencies subject to IRS Pub. 1075 are required to ask the Michigan State Police to perform fingerprint background checks on all employees, including Contractor and Subcontractor employees, who may have access to any database of information maintained by the federal government that contains confidential or personal information, including, but not limited to, federal tax information. Further, pursuant to Michigan law, any agency described above is prohibited from providing Contractors or Subcontractors with the result of such background check. For more information, please see Michigan Public Act 427 of 2018. Upon request, or as may be specified in Schedule A, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks.
- 15. 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 other than a competitor of Contractor. 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.
- 16. 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 of more than 50% of Contractor's stock; (b) a sale of substantially all of Contractor's assets; (c) a change in a majority of Contractor's board members; (d) consummation of a merger or consolidation of Contractor with any other entity; (e) a change in ownership through a transaction or series of transactions; (f) or the board (or the stockholders) approves a plan of complete liquidation. A change of control does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.

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

- 17. Ordering.** The State will request all Contract Activities through Orders. Contractor hereby agrees, upon receipt of an Order, to deliver to the State the Equipment, Software, and/or Services identified in the Order, and to install and set up such Equipment in accordance with the Order and the Contract, and to provide all Services, Software, and products as identified in the Order in accordance with the Contract, including the Statement of Work.
- 18. Acceptance.** Contract Activities are subject to inspection and testing by the State within 30 calendar days of the State's receipt of them ("State Review Period"). If the State determines that the Contract Activities meet the requirements of the contract, the State will notify Contractor of acceptance of the Contract Activity ("Acceptance" or "Accept") within 7 days after the end of the State Review Period. If Contract Activities are not fully accepted by the State, the State will notify Contractor by the end of the State Review Period that the Contract Activities are conditionally accepted but noted deficiencies must be corrected within 30 days; or if the State finds material deficiencies, Contractor must cure such deficiencies, at no additional cost and if not corrected within that time period, the State, at its option may (a) terminate the applicable Order; (b) demand replacement Contract Activities from Contractor at no additional cost to the State; or (c) extend the Contractor's time to cure for a time period in the State's sole determination. If the State terminates the Order as set forth herein, Contractor must refund to the State the portion of the purchase price of the Equipment previously paid by State (if any) that is the subject of the applicable Order.
- If Contractor is unable or refuses to correct the deficiency within the time response standards set forth in this Contract, the State may cancel the order in whole or in part. The State, or a third party identified by the State, may perform the Contract Activities and recover the difference between the cost to cure and the Contract price
- To the extent that Contract Activities includes the provision of a Services through the use of an online portal, Contractor must comply with any Service Level Agreement set forth in this Contract.
- 19. Delivery.** Contractor must deliver all Contract Activities F.O.B. destination, within the State premises with transportation and handling charges paid by Contractor, unless otherwise specified in a Schedule. All containers and packaging become the State's exclusive property upon Acceptance.
- 20. Risk of Loss and Title.** Upon delivery to the State, title and risk of loss or damage to Contract Activities passes to the State, except as to latent defects, fraud, and Contractor's warranty obligations. If the State rejects the Contract Activities, subject to Section 19, Contractor must remove them from the premises within a reasonable period of time after notification of rejection... Contractor must reimburse the State for costs and expenses incurred in storing rejected Contract Activities.
- 21. Warranty** The warranty provisions set forth in the Master Agreement section X apply, except that the warranty period will begin upon Acceptance as set forth in Section 18 above and if the repaired and/or replaced Contract Activity proves to be inadequate, or fails of its essential purpose, the State may return such non-conforming Contract Activities to the Contractor for a full refund.

**22. Invoices and Payment.** Invoices must conform to the requirements communicated from time-to-time by the State. All undisputed amounts are payable within 45 days of the State's receipt. Contractor may only charge for Contract Activities provided as specified in this Contract. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services purchased under this Agreement are for the State's exclusive use. To the extent the State (or Purchasing Entity) is not exempt from taxes on its purchases under this Agreement, then the State (or Purchasing Entity) shall pay such taxes to Contractor. Notwithstanding the foregoing, all fees are exclusive of taxes, and Contractor is responsible for remitting to the applicable authorities all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed on State's (or Purchasing Entity's) purchases under this Agreement by any federal, state, or local governmental entity.

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

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

**23. Reserved.**

**24. Stop Work Order.** The State may issue a Stop Work Order to halt all future orders. Contractor must not deliver, install, or otherwise take action under a Delivery Order after receipt of a Stop Work Order, unless the Stop Work Order has been rescinded in writing.

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

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

immediately, or (b) continue to perform for a specified period. If it is later determined that Contractor was not in breach of the Contract, the termination will be deemed to have been a Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in Section 26, Termination for Convenience.

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

**26. Termination for Convenience.** The State may immediately terminate this Contract in whole or in part, or an Order, without penalty and for any reason or no reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities immediately, or (b) continue to perform the Contract Activities in accordance with Section 27, Transition Responsibilities. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as mutually agreed to by the State and the Contractor for State approved Transition Responsibilities..

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

**28. Reserved.**

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

breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

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

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

Any litigation activity on behalf of the State, or any of its subdivisions under this Section, 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.

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

**30. Infringement Remedies.** If, in either party's opinion, any piece of equipment, software, commodity, or service supplied by Contractor or its subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor must, at its expense: (a) procure for the State the right to continue using the equipment, software, commodity, or service, or if this option is not reasonably available to Contractor, (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by the State with appropriate credits to the State against Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it. Notwithstanding the foregoing indemnity and remedy provisions, Contractor will have no obligation to defend or indemnify State or any Purchasing Entity, as applicable, if the infringement or misappropriation results from: (i) modifications to the equipment, software, commodity, or service by anyone other than BlueCrest; (ii) combination of the equipment, software, commodity, or service with State's or any Purchasing Entity's equipment or non-Contractor products if such claim of infringement or misappropriation would have been avoided had such combination, operation or use not occurred; or (iii) State's or any Purchasing Entity's failure to implement modifications (which if delivered to State or Purchasing Entity expressly to avoid infringement, will be delivered at no additional cost to State or



Purchasing Entity and which will provide substantially the same functionality as the infringing or potentially infringing equipment, software, commodity, or service).

**31. Limitation of Liability and Disclaimer of Damages. IN NO EVENT WILL THE STATE'S AGGREGATE LIABILITY TO CONTRACTOR UNDER THIS CONTRACT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT, EXCEED THE MAXIMUM AMOUNT OF FEES PAYABLE UNDER THE APPLICABLE ORDER.**

Neither the State nor the Contractor is liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action.

**32. Disclosure of Litigation, or Other Proceeding.** Contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "**Proceeding**") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of the Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (3) any complaint filed in a legal or administrative proceeding alleging the Contractor or its subcontractors discriminated against its employees, subcontractors, vendors, or suppliers during the term of this Contract; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.

**33. State Data.**

**a. State's Obligation.** The State hereby acknowledges and agrees that in no event shall it send, transmit, provide or otherwise disclose any PII or PHI to Contractor without Contractor's prior written consent and that it shall obtain such consent in each instance of such proposed PII and/ PHI disclosure to Contractor.

**b. Ownership.** The State's data ("**State Data**," which will be treated by Contractor as Confidential Information) includes: (a) User Data; and (a) any other data collected, used, processed, stored, or generated as the result of the Contract Activities, including but not limited to: (i) personally identifiable information ("**PII**") collected, used, processed, stored, or generated as the result of the Contract Activities, including, without limitation, any information that identifies an individual, such as an individual's social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother's maiden name, email address, credit card information, or an individual's name in combination with any other of the elements here listed; and (ii) protected health information ("**PHI**") collected, used, processed, stored, or generated as the result of the Contract Activities, which is defined under the Health Insurance Portability and Accountability Act (HIPAA) and its related rules and regulations. State Data is and will remain the sole and exclusive property of the State and all right, title, and interest in the same is reserved by the State.

**c. Contractor Use of State Data.** Contractor is provided a limited license to State Data for the sole and exclusive purpose of providing the Contract Activities,

including a license to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the Contract Activities. Contractor must: (a) keep and maintain State Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Contract and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose State Data solely and exclusively for the purpose of providing the Contract Activities, such use and disclosure being in accordance with this Contract, any applicable Statement of Work, and applicable law; (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.

- d. **Extraction of State Data.** Contractor must, within 5 business days of the State's request, provide the State, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Contractor), an extract of the State Data in the format mutually agreed to by the State and Contractor.
- e. **Backup and Recovery of State Data.** Unless otherwise specified in a Schedule, Contractor is responsible for maintaining a backup of State Data and for an orderly and timely recovery of such data. Unless otherwise described in Schedule A, Contractor must maintain a contemporaneous backup of State Data that can be recovered within a commercially reasonable period of time.
- f. **Discovery.** Contractor will promptly notify the State upon receipt of any requests which in any way might reasonably require access to State Data, Software, or the State's use of the 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 two (2) business days after Contractor receives the request. Unless required by law, 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 use commercially reasonable efforts to provide its completed responses to the State with adequate time for State review, revision and approval.
- g. **Loss or Compromise of Data.** In the event of any act, error, negligence, misconduct, or breach on the part of Contractor that compromises or is suspected to compromise the security, confidentiality, or integrity of State Data or the physical, technical, administrative, or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality, or integrity of State Data, Contractor must, as applicable: (a) notify the State as soon as practicable but no later than two (2) business days of becoming aware of such occurrence; (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 required by the State; (c) in the case of PII or PHI, at the State’s sole election, (i) with approval and assistance from the State, notify the affected individuals who comprise the PII or PHI as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within 5 calendar days of the occurrence; or (ii) reimburse the State for any costs in notifying the affected individuals; (d) in the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no less than 24 months following the date of notification to such individuals; (e) perform or take any other actions required to comply with applicable law as a result of the occurrence; (f) pay for any costs associated with the occurrence, including but not limited to any costs incurred by the State in investigating and resolving the occurrence, including reasonable attorney’s fees associated with such investigation and resolution; (g) without limiting Contractor’s obligations of indemnification as further described in this Contract, indemnify, defend, and hold harmless the State for any and all claims, including reasonable attorneys’ fees, costs, and incidental expenses, which may be suffered by, accrued against, charged to, or recoverable from the State in connection with the occurrence; (h) be responsible for recreating lost State Data in the manner and on the schedule set by the State without charge to the State; and (i) provide to the State a detailed plan within 10 calendar days of the occurrence describing the measures Contractor will undertake to prevent a future occurrence. Notification to affected individuals, as described above, must comply with applicable law, be written in plain language, not be tangentially used for any solicitation purposes, and contain, at a minimum: name and contact information of Contractor’s representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Contractor has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Contractor. The State will have the option to review and approve any notification sent to affected individuals prior to its delivery. Notification to any other party, including but not limited to public media outlets, must be reviewed and approved by the State in writing prior to its dissemination. The parties agree that any damages relating to a breach of this **Section 33** are to be considered direct damages and not consequential damages.

**h. Definitions.**

- (1) **“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.

- 34. 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.
- a. Meaning of Confidential Information.** For the purposes of this Contract, the term “**Confidential Information**” means all information and documentation of a party that: (a) has been marked “confidential” or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked “confidential” or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked “confidential” or with words of similar meaning; or, (c) should reasonably be recognized as confidential information of the disclosing party. The term “Confidential Information” does not include any information or documentation that was or is: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party’s proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.
- b. Obligation of Confidentiality.** The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor’s responsibilities; and (c) Contractor obligates the subcontractor in a written contract to maintain the State’s Confidential Information in confidence.
- c. Cooperation to Prevent Disclosure of Confidential Information.** Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.

- d. **Remedies for Breach of Obligation of Confidentiality.** Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.
- e. **Surrender of Confidential Information upon Termination.** Upon termination of this Contract or a Statement of Work, in whole or in part, each party must, within 5 calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Contract. Should Contractor or the State determine that the return of any Confidential Information is not feasible, such party must destroy the Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other party. However, the State's legal ability to destroy Contractor data may be restricted by its retention and disposal schedule, in which case Contractor's Confidential Information will be destroyed after the retention period expires.

### 35. Data Privacy and Information Security.

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

expense, is entitled to perform, or to have performed, an on-site audit of Contractor's data privacy and information security program if, and only if, Contractor is processing PII or PHI on behalf of State. In lieu of an on-site audit, upon request by the State, Contractor agrees to complete, within 45 calendar days of receipt, an audit questionnaire provided by the State regarding Contractor's data privacy and information security program.

- d. **Audit Findings.** Contractor will review and consider for implementation any safeguards identified by the State or by any audit of Contractor's data privacy and information security program.
- e. **State's Right to Termination for Deficiencies.** The State reserves the right, at its sole election, to immediately terminate this Contract or a Statement of Work without limitation and without liability if the State determines that Contractor fails or has failed to meet its obligations under this Section.

36. **Reserved.**

37. **Reserved.**

38. **Records Maintenance, Inspection, Examination, and 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 records related to the Contract through the term of the Contract and for 4 years after the latter of termination, expiration, or final payment under this Contract or any extension ("**Audit Period**"). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.

Within 10 calendar days of providing notice, Contractor shall make available for examination, copying, 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 the Contract must be paid or refunded within 45 calendar days.

Except as otherwise required by MCL 18.1470, this Section applies to Contractor, , and its direct and indirect subsidiaries, and any subcontractor that performs Contract Activities in connection with this Contract.

39. **Representations and Warranties.** Contractor represents and warrants: (a) Contractor is the owner or licensee of any Contract Activities and Software that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, licensed use, and possession of all Equipment as required by the Contract; (b) all Contract Activities and Equipment are delivered free from any security interest, lien, or encumbrance and ; (c) Contractor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Contract Activities and Equipment; (d) the Contract Activities and Equipment are merchantable and fit for the specific purposes identified in the Contract; (e) the Contract signatory has the authority to enter into this Contract; (f) all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the

information, and Contractor will inform the State of any material adverse changes;(g) as of the date of this Contract, all information furnished and representations made in connection with the award of this Contract are true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading; and that (h) 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; i) that all Contract Activities, Equipment, and Software, as delivered by Contractor do not contain any Harmful Code or any third party or open source components unless approved in advance by the State; (j) that Contractor will not, and will not permit, any advertising through any Hosted Services. A breach of this Section is considered a material breach of this Contract, which entitles the State to terminate this Contract under Section [25](#), Termination for Cause.

**40. Conflicts and Ethics.** Contractor will uphold high ethical standards and is prohibited from: (a) knowingly holding or acquiring an interest that would conflict with this Contract; (b) knowingly 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 and its direct and indirect subsidiaries, and any subcontractor that performs Contract Activities in connection with this Contract.

**41. Compliance with Laws.** Contractor must comply with all applicable federal, state and local laws, rules and regulations.

**42. Reserved.**

**43. Reserved.**

**44. Nondiscrimination.** Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, and [Executive Directive 2019-09](#). Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex (as defined in Executive Directive 2019-09), height, weight, marital status, partisan considerations, any mental or physical disability, or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position. Breach of this covenant is a material breach of this Contract.

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

**46. 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.

**47. 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 Contract Activities from other sources.

**48. Force Majeure.** Neither party will be in breach of this Contract because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Contractor will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third party.

**49. Dispute Resolution.** The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 business days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.

Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' senior executive and either concludes that resolution is unlikely or fails to respond within 15 business days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This Section does not limit the State's right to terminate the Contract.

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

**51. Reserved.**

**52. Reserved.**

**53. 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.

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



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

**56.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.

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# **SCHEDULE A - RESERVED**

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## **SCHEDULE B - RESERVED**

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Click on this link for most recent pricing: [Portfolio Contractor - NASPO ValuePoint](#)

# SCHEDULE C - INSURANCE REQUIREMENTS

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Contract No. 220000000860

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

Required Limits	Additional Requirements
<b>Commercial General Liability Insurance</b>	
<b>Minimum Limits:</b> <b>\$1,000,000 Each Occurrence</b> <b>\$1,000,000 Personal &amp; Advertising Injury</b> <b>\$2,000,000 Products/Completed Operations</b> <b>\$2,000,000 General Aggregate</b>	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.
<b>Automobile Liability Insurance</b>	
<b>Minimum Limits:</b> <b>\$1,000,000 Per Accident</b>	Contractor must have their policy: (1) endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds; and (2) include Hired and Non-Owned Automobile coverage.
<b>Workers' Compensation Insurance</b>	
<b>Minimum Limits:</b> <b>Coverage according to applicable laws governing work activities.</b>	Waiver of subrogation, except where waiver is prohibited by law.
<b>Employers Liability Insurance</b>	
<b>Minimum Limits:</b> <b>\$500,000 Each Accident</b> <b>\$500,000 Each Employee by Disease</b> <b>\$500,000 Aggregate Disease</b>	

**8. Non-Waiver.** This Schedule C is not intended to and is not to be construed in any manner as waiving, restricting or limiting the liability of either party for any obligations under this Contract, including any provisions hereof requiring Contractor to indemnify, defend and hold harmless the State.

# **SCHEDULE D - RESERVED**

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# SCHEDULE E – DATA SECURITY REQUIREMENTS FOR PURCHASES

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State and Contractor acknowledge and agree (i) that as of execution of the Participating Addendum Contractor is not providing to State, and there is no intent for Contractor to provide to State, any Hosted Services, data storage, backup, and/or restoration and disaster recovery services, and (ii) that Contractor shall only provide Hosted Services, data storage, backup, and/or restoration and disaster recovery services to State pursuant to an agreement (x) in form and substance acceptable to each of Contractor and State, (y) executed contemporaneously with the commencement of such services, and (z) detailing the terms and provisions of such services. For the avoidance of doubt, this Schedule E (Data Security Requirements for Purchases) does not constitute such agreement. Contractor hereby informs State, and State hereby acknowledges, that Contractor neither maintains a FedRAMP authorization nor an annual SSAE 18 SOC 2 Type II audit.

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.

“**Confidential Data**” means sensitive information wherein unauthorized disclosure could cause serious financial, legal or reputational damage to an Agency or the SOM. Confidential data may include personal identifying information (PII) or confidential non-public information that relates to an Agency’s business. Confidential data should only be made available to authorized personnel on a need-to-know basis and should require a signed non-disclosure agreement.

“**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.)).

“**Hosted Services**” means the hosting, management and operation of the operating environment and related resources for remote electronic access and use by the State, including any services and facilities related to disaster recovery obligations.

“**Hosting Provider**” means any 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.

“**Restricted Data**” means information that is extremely sensitive and any disclosure or corruption could be hazardous to life or health, cause extreme damage to integrity or image, and/or impair the effective delivery of services. Extreme damage includes loss of life, risks to public safety, substantial financial loss, social hardship and major economic impact. Restricted data can be made available to named individuals or specific positions on a need-to-know basis.

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

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

“**Software**” is defined in PA Ex 1.

“**Software Support**” means Contractor’s support services for Software.

2. **Security Officer.** Contractor will appoint a Contractor employee to respond to the State’s inquiries regarding the security of the Software and, if applicable, the Hosted Services who has sufficient knowledge of the security of the Software and, if applicable, 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 in Contractor’s possession;
  - (b) protect against any anticipated threats or hazards to the security or integrity of the State Data in Contractor’s possession;
  - (c) protect against unauthorized disclosure, access to, or use of the State Data in Contractor’s possession;
  - (d) ensure the proper disposal of any State Data in Contractor’s or its subcontractor’s possession; and
  - (e) ensure that all Contractor employees and subcontractors involved in the performance of Contract Activities hereunder 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 with respect to



Software the State and the Contractor shall agree on the PSPs that apply to such Software and the Contractor must at all times comply with such PSPs. The public State IT policies and standards applicable to Software are available at [https://www.michigan.gov/dtmb/0,5552,7-358-82547\\_56579\\_56755---,00.html](https://www.michigan.gov/dtmb/0,5552,7-358-82547_56579_56755---,00.html). Prior to purchases, applicable PSP's will be agreed upon.

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 [1340.00.130.02 Acceptable Use of Information Technology \(michigan.gov\)](#). 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.

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

**5.1** If Hosted Services are provided by a Hosting Provider, ensure each Hosting Provider maintains FedRAMP authorization for all 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 25** of the Contract;

**5.2** if Hosted Services are provided by the Contractor, maintain either a FedRAMP authorization or an annual SSAE 18 SOC 2 Type II audit or annual ISO 27001 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** if Hosted Services are provided by the Contractor, ensure that the Software and State Data is securely stored, hosted, supported, administered, accessed, developed, 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](http://www.uptimeinstitute.com)), or its equivalent; For the avoidance of doubt, Contractor will not be developing any Software or State Data under the Contract.

- 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, remain compliant with ISO 27001;
- 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 State Data in Contractor's possession, that ensure a level of security appropriate to the risks presented by the processing of State Data and the nature of such State Data, consistent with best industry practice and applicable standards (including, but not limited to, compliance with FISMA, NIST, CMS, IRS, FBI, SSA, HIPAA, FERPA and PCI requirements as applicable);
- 5.6** take all reasonable measures to:
- (a)** secure and defend all locations, equipment, systems and other materials and facilities employed in connection with the Software and Software Support against "malicious actors" and others who may seek, without authorization, to destroy, disrupt, damage, encrypt, modify, copy, access or otherwise use the Software or, if applicable, the Hosted Services or the information found therein; and
  - (b)** prevent (i) if Hosted Services are provided by the Contractor, the State and its Authorized Users from having access to the data of other customers or such other customer's users of the Contract Activities; (ii) with respect to State Data in Contractor's possession, State Data from being commingled with or contaminated by the data of other customers or their users; and (iii) unauthorized access to any of the State Data;
- 5.7** if Hosted Services are provided by the Contractor and Software transfers Confidential Data and Restricted Data, 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 and/or Software support Identity Federation/Single Sign-on (SSO) capabilities using Security Assertion Markup Language (SAML), Open Authentication (OAuth), Lightweight Directory Access Protocol (LDAP) or comparable State approved mechanisms;
- 5.9** if Hosted Services are provided by the Contractor, ensure the Hosted Services implements NIST compliant multi-factor authentication for privileged/administrative and other identified access.

**6. Security Accreditation Process.** Throughout the Term and solely with respect to Software and Software Support unless and until Contractor provides Hosted Services, Contractor will assist the State, at no additional cost, with State's **Security Accreditation Process**, which includes the, 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 a commercially reasonable period of time, not to exceed thirty (30) days, unless otherwise agreed upon by the parties. On an annual basis, or 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 or Contractor may elect in its sole and reasonable discretion, not to perform related remediation activities and agree to a termination of the Contract without liability or penalty. For all findings associated with the Contractor's Software and Software Support, at no additional cost, Contractor may create or assist with the creation of State approved POAMs, perform related remediation activities, and provide evidence of compliance, or Contractor may elect in its sole and reasonable discretion, not to perform related remediation activities and agree to a termination of the Contract without liability or penalty. 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 in its possession, including but not limited to any backup, disaster recovery or other policies, practices or procedures relating to the State Data in its

possession and any other information relevant to its compliance with this Contract.

- 8.2** The State has the right to review with Contractor, Contractor's data privacy and information security program prior to the commencement of Contract Activities and from time to time during the term of this Contract by requesting information be provided in the form of an annual Questionnaire. Contractor shall also provide its Enterprise IT Policy Framework document.
- 8.3** During the Term, Contractor will, provide a copy of Contractor's ISO 27001 certification to the state annually. 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** and has not been able to cure deficiencies within 30 days.

**9. Application Scanning.** During the Term, Contractor must, at its sole cost and expense, scan the Software and, if applicable, the Hosted Services prior to delivery to or access by the State, 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 Software and, if applicable, Hosted Services scanning and remediation must include each of the following types of scans and activities:

- 9.1** Dynamic Application Security Testing (DAST) – Interactive web application scanning for vulnerabilities, analysis, remediation, and validation (may include Interactive Application Security Testing (IAST)). Testing should be completed for each major release and no less than annually for all code.
- (a) Upon incorporating DAST into its Software security protocols, anticipated to be on or before December 31, 2024, Contractor shall dynamically scan Software that incorporates a web interface, including any updates and maintenance releases prior to deployment using an industry standard application scanning tool and provide the State with an overview vulnerabilities assessment. The assessment can be generalized to list number and type of vulnerabilities, such as critical, high, moderate and low (i.e. 0 – Critical, 1 – High, 2 – Moderate, 0 – Low).
- 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 of the critical and high 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.

**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 of critical and high vulnerabilities. SCA scans may be included as part of SAST and DAST scanning or employ the use of an SCA tool to meet the scanning requirements. These scans must be completed for all third party and open source software initially, for all updated third party and open source software, and for all third party and open source software in each major release.

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

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

(b) Penetration Testing – For Hosted Services, simulated attack on the application and infrastructure to identify security weaknesses.

**10. Infrastructure Scanning.**

**10.1** For Software Development Environment, Contractor must ensure the infrastructure and applications are scanned using a mutually approved scanning tool (e.g., Qualys, Tenable, or other PCI Approved Vulnerability Scanning Tool) at least monthly. Contractor will ensure the remediation of the critical and high issues identified in the scan according to the remediation time requirements documented in the State's PSPs.

**11. Nonexclusive Remedy for Security Breach.** Any failure of the Contract Activities 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 upon

written notice to Contractor, and Contractor must promptly reimburse to the State any Fees prepaid by the State prorated to the date of such termination.

# SCHEDULE F – FEDERAL PROVISIONS

## ADDENDUM

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This addendum applies to purchases that will be paid for in whole or in part with funds obtained from the federal government. The provisions below are required, and the language is not negotiable. If any provision below conflicts with the State's terms and conditions, including any attachments, schedules, or exhibits to the State's Contract, the provisions below take priority to the extent a provision is required by federal law; otherwise, the order of precedence set forth in the Contract applies. Hyperlinks are provided for convenience only; broken hyperlinks will not relieve Contractor from compliance with the law.

### 1. Equal Employment Opportunity

If this Contract is a “**federally assisted construction contract**” as defined in [41 CFR Part 60-1.3](#), and except as otherwise may be provided under [41 CFR Part 60](#), then during performance of this Contract, the Contractor agrees as follows:

- 1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- 2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- 3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

- 4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 5) The Contractor will comply with all provisions of [Executive Order 11246](#) of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 6) The Contractor will furnish all information and reports required by [Executive Order 11246](#) of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in [Executive Order 11246](#) of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in [Executive Order 11246](#) of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of [Executive Order 11246](#) of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:  
  
Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.  
  
The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.



The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

**Davis-Bacon Act (Prevailing Wage)**

If this Contract is a **prime construction contract** in excess of \$2,000, the Contractor (and its Subcontractors) must comply with the Davis-Bacon Act ([40 USC 3141-3148](#)) as supplemented by Department of Labor regulations ([29 CFR Part 5](#), "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"), and during performance of this Contract the Contractor agrees as follows:

- 1) All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
- 2) Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- 3) Additionally, contractors are required to pay wages not less than once a week.

**Copeland "Anti-Kickback" Act**

If this Contract is a contract for construction or repair work in excess of \$2,000 where the Davis-Bacon Act applies, the Contractor must comply with the Copeland "Anti-Kickback" Act ([40 USC 3145](#)), as supplemented by Department of Labor regulations ([29 CFR Part 3](#), "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"), which

prohibits the Contractor and subrecipients from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled, and during performance of this Contract the Contractor agrees as follows:

- 1) **Contractor.** The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- 2) **Subcontracts.** The Contractor or Subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA or the applicable federal awarding agency may by appropriate instructions require, and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- 3) **Breach.** A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a Contractor and Subcontractor as provided in 29 C.F.R. § 5.12.

#### **Contract Work Hours and Safety Standards Act**

If the Contract is **in excess of \$100,000** and **involves the employment of mechanics or laborers**, the Contractor must comply with [40 USC 3702](#) and [3704](#), as supplemented by Department of Labor regulations ([29 CFR Part 5](#)), as applicable, and during performance of this Contract the Contractor agrees as follows:

- 1) **Overtime requirements.** No Contractor or Subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
- 2) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- 3) **Withholding for unpaid wages and liquidated damages.** The State shall upon its own action or upon written request of an authorized representative of the

Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or Subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

- 4) Subcontracts.** The Contractor or Subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

#### **Rights to Inventions Made Under a Contract or Agreement**

If the Contract is funded by a federal “funding agreement” as defined under [37 CFR §401.2 \(a\)](#) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with [37 CFR Part 401](#), “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

#### **Clean Air Act and the Federal Water Pollution Control Act**

If this Contract is **in excess of \$150,000**, the Contractor must comply with all applicable standards, orders, and regulations issued under the Clean Air Act ([42 USC 7401-7671q](#)) and the Federal Water Pollution Control Act ([33 USC 1251-1387](#)), and during performance of this Contract the Contractor agrees as follows:

##### **Clean Air Act**

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The Contractor agrees to report each violation to the State and understands and agrees that the State will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency or the applicable federal awarding agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA or the applicable federal awarding agency.

##### **Federal Water Pollution Control Act**

1. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The Contractor agrees to report each violation to the State and understands and agrees that the State will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency or the applicable federal awarding agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA or the applicable federal awarding agency.

### **Debarment and Suspension**

A “contract award” (see [2 CFR 180.220](#)) must not be made to parties listed on the government-wide exclusions in the [System for Award Management](#) (SAM), in accordance with the OMB guidelines at [2 CFR 180](#) that implement [Executive Orders 12549 \(51 FR 6370; February 21, 1986\)](#) and [12689 \(54 FR 34131; August 18, 1989\)](#), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than [Executive Order 12549](#).

- 1) This Contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the Contractor’s principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- 2) The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- 3) This certification is a material representation of fact relied upon by the State. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- 4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

### **Byrd Anti-Lobbying Amendment**

Contractors who apply or bid for an award of **\$100,000 or more** shall file the required certification in *Exhibit 1 – Byrd Anti-Lobbying Certification* below. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or

employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

### **Procurement of Recovered Materials**

Under [2 CFR 200.322](#), Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

- 1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:
  - a. Competitively within a timeframe providing for compliance with the contract performance schedule;
  - b. Meeting contract performance requirements; or
  - c. At a reasonable price.
- 2) Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- 3) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

### **Additional FEMA Contract Provisions.**

The following provisions apply to purchases that will be paid for in whole or in part with funds obtained from the Federal Emergency Management Agency (FEMA):

- 1) **Access to Records.** The following access to records requirements apply to this contract:
  - a. The Contractor agrees to provide the State, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
  - b. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
  - c. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

In compliance with the Disaster Recovery Act of 2018, the State and the Contractor acknowledge and agree that no language in this contract is intended to prohibit

audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

**2) Changes.**

See the provisions regarding modifications or change notice in the Contract Terms.

**3) DHS Seal Logo and Flags.**

The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

**4) Compliance with Federal Law, Regulations, and Executive Orders.**

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The Contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

**5) No Obligation by Federal Government.**

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the State, Contractor, or any other party pertaining to any matter resulting from the Contract.”

**6) Program Fraud and False or Fraudulent Statements or Related Acts**

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor’s actions pertaining to this contract.

# SCHEDULE F - EXHIBIT 1 - BYRD ANTI-LOBBYING CERTIFICATION

Contractor must complete this certification if the purchase will be paid for in whole or in part with funds obtained from the federal government and the purchase is greater than \$100,000.

## **APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING**

### Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, Pitney Bowes Inc., certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

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Signature of Contractor's Authorized Official

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Name and Title of Contractor's Authorized Official

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Date



## **SCHEDULE G – DISASTER RECOVERY PLAN**

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(Contractor's Disaster Recovery Plan is to be included as an attachment if Contractor provides Hosted Services)

Template Order Form

**DMT SOLUTIONS GLOBAL CORPORATION**  
(d/b/a BlueCrest)

**EQUIPMENT, MAINTENANCE, SOFTWARE & PROFESSIONAL SERVICES**  
**ORDER FORM**  
**("Order")**

		DATED:	
<b>BILL TO</b>		<b>INSTALL ADDRESS (if different)</b>	
<b>Purchasing Entity Name:</b>		<b>Purchasing Entity Install Facility:</b>	
<b>Address:</b>		<b>Address:</b>	
<b>City, State, Zip:</b>		<b>City, State, Zip:</b>	
<b>Purchasing Entity Acct #:</b>		<b>Purchasing Entity Acct #:</b>	
<b>Phone #:</b>		<b>Phone #:</b>	
<b>Contact Name:</b>		<b>Contact Name:</b>	

EQUIPMENT					
Qty	Item	Equipment Description (Model)	Unit Price	Discount/Trade-In Allowance	Net Equipment Price
<b>Requested Install Date:</b>		<b>Special Billing Requirements:</b>		<b>Aggregate Net Equipment Price Subtotal</b>	
<b>TAX EXEMPT:</b> <input type="checkbox"/> State <input type="checkbox"/> County <input type="checkbox"/> City <b>(Attach Certificate)</b>				<b>Aggregate Freight</b>	
				<b>Total Net Equipment Price (Excluding Tax)</b>	
Equipment Payment Terms					
See Exhibit I to Participating Addendum.					

MAINTENANCE SERVICES					
Equipment Description (Model)	Equipment Serial Number	Equipment Location	Maximum Annual Cycles included in Maintenance Fee	On-Call Maintenance or On-Site Maintenance	Annual Maintenance Service Fees
<b>TAX EXEMPT:</b>		<b>Special Billing Requirements:</b>		<b>Net Subtotal</b>	

<input type="checkbox"/> State <input type="checkbox"/> County <input type="checkbox"/> City <b>(Attach Certificate)</b>	<b>Total Price (Excluding Tax)</b>
<b>MAINTENANCE SERVICES PAYMENT TERMS</b>	
See Exhibit 1 to Participating Addendum.	

APPLICATION SOFTWARE & MAINTENANCE SERVICES									
Qty	Licensed Product	Production License / Non-Production License	License Term (Perpetual / Term)	Number of [Users] [Transactions] [Customers (if Service Provider)]	License Fee Perpetual /Annual Term	Annual Maintenance Fee (if applicable)	On Prem / Cloud	DELETE	Aggregate Fees
Installation Site and Requested Install Date:			Special Billing Requirements:			Total Net Application Software & Maintenance Services Fees (Excluding Tax)			
TAX EXEMPT: <input type="checkbox"/> State <input type="checkbox"/> County <input type="checkbox"/> City <b>(Attach Certificate)</b>									
<b>APPLICATION SOFTWARE &amp; MAINTENANCE PAYMENT TERMS</b>									
See Exhibit 1 to Participating Addendum.									

PROFESSIONAL SERVICES				
Description	Billing Schedule			Estimated Fees
	Fixed Fee	Retainer	Time & Materials	
		Hours: _____ ; Hourly Rate: _____ Days: _____ ; Daily Rate: _____	Minimum Hours: _____ Hourly Rate: _____ Daily Rate: _____	
		Hours: _____ ; Hourly Rate: _____ Days: _____ ; Daily Rate: _____	Minimum Hours: _____ Hourly Rate: _____ Daily Rate: _____	
<b>Estimated Travel Expenses</b>				
<b>Termination Date (if any):</b>		<b>Total Estimated Professional Services Fees (Excluding Tax)</b>		
<b>PAYMENT TERMS</b>				
See Exhibit 1 to Participating Addendum.				

**APPROVAL**

The Purchasing Entity hereby acknowledges and agrees that this Order is subject to, incorporated with and governed by (i) the Master Agreement, including all exhibits and schedules attached thereto, by and between the State of Arizona and Contractor for Mailing Equipment, Supplies and Maintenance, CTR CTR058805, and (ii) the Participating Addendum, including all exhibits and schedules attached thereto, by and between the State of Michigan and Contractor.

The Purchasing Entity further acknowledges and agrees that any terms appearing on Purchasing Entity's purchase order or other Purchasing Entity form(s) shall be void and of no force or effect.

**DMT SOLUTIONS GLOBAL CORPORATION**  
**d/b/a BlueCrest ("BlueCrest" or "Contractor")**

*[Insert Purchasing Entity Name]*  
**(the "Purchasing Entity")**

**By:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Title:** \_\_\_\_\_

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

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