



STATE OF MICHIGAN ENTERPRISE PROCUREMENT

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

CONTRACT CHANGE NOTICE

Change Notice Number **3**
to
Contract Number **MA18000001130**

CONTRACTOR	JEM TECH GROUP
	23537 Lakepointe Drive
	Clinton Twp. MI 48036
	Jami M. Moore
	586-783-3400
	j.moore@jemtechgroup.com
	CV0032887

STATE	Program Manager	Various	Various
STATE	Contract Administrator	Lisa Spitzley	DTMB
		(517) 249-0440	
		SpitzleyL4@michigan.gov	

CONTRACT SUMMARY				
HVAC Maintenance, New Equipment, Software, and Supplies				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE	
August 28, 2018	August 27, 2023	5 - 24 Months	September 30, 2025	
PAYMENT TERMS		DELIVERY TIMEFRAME		
Net 45		N/A		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-Card <input type="checkbox"/> Direct Voucher (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"/>	24 Months	<input type="checkbox"/>		September 30, 2027
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$700,000.00	\$0.00	\$700,000.00		
DESCRIPTION				
Effective January 17, 2025, the State is executing the 2nd of 5, Two-Year options. The revised expiration date is 9/30/2027. Please note the Contract Administrator for the State is changed to Lisa Spitzley, see Change Notice cover page for contact information.				
All other terms, conditions, specifications and pricing remain the same. Per Contractor and Agency agreement, and DTMB Procurement approval.				

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

AGENCY	NAME	PHONE	EMAIL
DTMB	Melissa Hoodhood	517-930-0687	HoodhoodM@michigan.gov
MSP	Paula Hurst	517-243-9786	HurstP3@michigan.gov



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

CONTRACT CHANGE NOTICE

Change Notice Number **2**
 to
 Contract Number **180000001130**

CONTRACTOR	JEM TECH GROUP
	23537 Lakepointe Drive
	Clinton Twp., MI 48036
	Jami M. Moore
	586-783-3400
	j.moore@jemtechgroup.com
	CV0032887

STATE	Program Manager	Melissa Hoodhood	DTMB
		517-930-0687	
		HoodhoodM@michigan.gov	
STATE	Contract Administrator	Lauren Stempek	DTMB
		(517) 243-4008	
		stempekl@michigan.gov	

CONTRACT SUMMARY

HVAC MAINTENANCE, NEW EQUIPMENT, SOFTWARE, AND SUP

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
August 28, 2018	August 27, 2023	5 - 2 Year	September 30, 2025

PAYMENT TERMS	DELIVERY TIMEFRAME

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

DESCRIPTION OF CHANGE NOTICE

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input type="checkbox"/>		September 30, 2025
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$700,000.00	\$0.00	\$700,000.00		

DESCRIPTION

Effective 8/7/2023 this change notice corrects Change Notice 1 which included the following errors:

- Effective date of 8/4/2022: The effective date of CN 1 is corrected to now be 8/4/2023.
- Length of Option 2 years: The length of the option being extended is corrected from 2-years, to now be 25-months. The revised expiration date is still 9/30/2025.

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



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

CONTRACT CHANGE NOTICE

Change Notice Number 1
 to
 Contract Number 180000001130

CONTRACTOR	JEM TECH GROUP
	23537 Lakepointe Drive
	Clinton Twp., MI 48036
	Jami M. Moore
	586-783-3400
	j.moore@jemtechgroup.com
	CV0032887

STATE	Program Manager	Melissa Hoodhood	DTMB
		517-930-0687	
	hoodhoodm@michigan.gov		
	Contract Administrator	Lauren Stempek	DTMB
(517) 243-4008			
stempek1@michigan.gov			

CONTRACT SUMMARY

HVAC MAINTENANCE, NEW EQUIPMENT, SOFTWARE, AND SUP

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
August 28, 2018	August 27, 2023	5 - 2 Year	August 27, 2023

PAYMENT TERMS	DELIVERY TIMEFRAME

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

DESCRIPTION OF CHANGE NOTICE

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	2 years	<input type="checkbox"/>		September 30, 2025
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$700,000.00	\$0.00	\$700,000.00		

DESCRIPTION

Effective 8/4/2022, the State is executing the 1st of 5 available, two-year, option years and extending this contract for 25 months. The revised contract date is 9/30/2025 instead of 8/27/2025 in order to align with FY End dates. Please note the States Program Manager has been changed to Melissa Hoodhood, and the Contract Administrator has been changed to Lauren Stempek.

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



STATE OF MICHIGAN ENTERPRISE PROCUREMENT

Department of Technology, Management, and Budget
525 W. Allegan St, Lansing, MI 48933
P.O. Box 30026, Lansing, MI 48909

NOTICE OF CONTRACT

NOTICE OF CONTRACT NO. **171-180000001130**

between
THE STATE OF MICHIGAN
and

CONTRACTOR	JEM Tech Group
	23537 Lakepointe Drive
	Clinton Twp., MI 48036
	Jami M. Moore
	586-783-3400
	j.moore@jemtechgroup.com

STATE	Program Manager	David Roach	DTMB
		517-490-5955	
	RoachD2@michigan.gov		
	Contract Administrator	Joshua Wilson	DTMB
517-249-0444			
WilsonJ31@michigan.gov			

CONTRACT SUMMARY

DESCRIPTION:			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
August 28, 2018	August 27, 2023	5 two-year options	
PAYMENT TERMS		DELIVERY TIMEFRAME	
Net 45			
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
N/A			
MISCELLANEOUS INFORMATION			
THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the solicitation #180000002112. Orders for delivery will be issued directly by the State through the issuance of a Delivery Order (DO).			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION			\$700,000.00

FOR THE CONTRACTOR:

JEM Tech Group

Company Name

Authorized Agent Signature

Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature

Mike Breen, Category Specialist

Name & Title

DTMB Procurement

Agency

Date



STATE OF MICHIGAN

STANDARD CONTRACT TERMS

This STANDARD CONTRACT (“**Contract**”) is agreed to between the State of Michigan (the “**State**”) and JEM Tech Group. (“**Contractor**”), a Michigan Corporation. This Contract is effective on August 28, 2018 (“**Effective Date**”), and unless terminated, expires on August 27, 2023 (the “**Term**”).

This Contract may be renewed for up to 5 additional 2-year period(s). Renewal is at the sole discretion of the State and will automatically extend the Term of this Contract. The State will document its exercise of renewal options via Contract Change Notice.

The parties agree as follows:

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

“**Acceptance**” has the meaning set forth in **Section 7**.

“**Audit Period**” has the meaning set forth in **Section 28**.

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

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

“**Change Notice**” has the meaning set forth in **Section 3.b**.

“**Change Proposal**” has the meaning set forth in **Section 3.a**.

“**Change Request**” has the meaning set forth in **Section 3**.

“**Confidential Information**” has the meaning set forth in **Section 0**.

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

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

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

“**Contract SOW**” means the statement of work entered into by the parties and attached as **Schedule A** to this Contract.

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

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

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

“Dispute Resolution Procedure” has the meaning set forth in **Section 37**.

“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 any Deliverable.

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

“Engagement SOW” means a statement of work entered into by the State and Contractor for the provision of additional specified Services and Deliverables

“Equipment” means the equipment that Contractor is required to or otherwise does provide to the State under this Contract and otherwise in connection with any Services, including but not limited to the power, environmental monitoring, HVAC equipment, and all related components including all items specifically identified as Equipment in the applicable Statement of Work.

“Fees” means the prices for Services and Deliverables set forth in an attachment to the applicable Statement of Work.

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

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

“Key Personnel” means any Contractor Personnel identified as key personnel in the applicable Statement of Work.

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

“Modification” means State-specific changes made to the Source Code of the Software to enhance, improve or otherwise create derivative works of the Software.

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

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

“Permitted Subcontractor” has the meaning set forth in **Section 9.e**.

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

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

“Reports” means any and all reports that Contractor is obligated to or otherwise does provide under the applicable Statement of Work.

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

“Services” means any of the services Contractor is required to or otherwise does provide under this Contract or an applicable Statement of Work (including any exhibits or attachments) as more fully described in the body of this Contract and the applicable Statement of Work.

“Software” means software Contractor is required to or otherwise does provide to the State under this Contract as set forth in the applicable Statement of Work, and any Maintenance Releases or New Versions provided to the State and any Configurations or Modifications made by or for the State pursuant to this Contract, and all copies of the foregoing permitted under this Contract and any applicable license agreement.

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

“State” means the State of Michigan.

“State Data” has the meaning set forth in **Section 25**.

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

“Statement of Work” means the Contract SOW or an Engagement SOW entered into by the parties. All references to “applicable Statement of Work” shall mean either the Contract SOW or an applicable Engagement SOW.

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

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

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

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

“**Unauthorized Removal**” has the meaning set forth in **Section 0**.

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

“**Warranty Period**” means the period of time commencing on the date of the State's Acceptance of the Deliverables and continuing for the period of time specified in the Contract SOW or an applicable Engagement SOW.

“**Work Product**” means all State-specific materials that Contractor is required to, or otherwise does, provide to the State under this Contract including but not limited to computer scripts, macros, user interfaces, Reports, project management documents, forms, templates, and other State-specific documents and related materials together with all ideas, concepts, processes, and methodologies developed in connection with this Contract whether or not embodied in this Contract.

2. **Services.** Contractor shall provide the Services and Deliverables pursuant to the executed Contract SOW, which is attached as **Schedule A** to this Contract. Contractor may provide additional Services and Deliverables pursuant to an Engagement SOW. The terms and conditions of this Contract will apply at all times to the Contract SOW and any Engagement SOW. Contractor agrees that prompt and timely performance of its obligations in accordance with this Contract, the Contract SOW, and any Engagement SOW is strictly required.
3. **Change Control Process.** The State may at any time request in writing (each, a “**Change Request**”) changes to the Contract SOW or an Engagement SOW, including changes to the Services and Deliverables (each, a “**Change**”). Upon the State’s submission of a Change Request, the parties will evaluate and implement all Changes in accordance with this **Section**
 - a. As soon as reasonably practicable, and in any case within twenty (20) Business Days following receipt of a Change Request, Contractor will provide the State with a written proposal for implementing the requested Change (“**Change Proposal**”), setting forth:
 - i. a written description of the proposed Changes to any Services or Deliverables;
 - ii. a schedule for commencing and completing any additional or modified Services or Deliverables, and the effect of such Changes, if any, on completing any other Services or Deliverables under the applicable Statement of Work;
 - iii. any additional resources Contractor deems necessary to carry out such Changes; and
 - iv. any increase or decrease in Fees resulting from the proposed Changes, which increase or decrease will reflect only the increase or decrease in time and expenses Contractor requires to carry out the Change.
 - b. Within thirty (30) Business Days following the State’s receipt of a Change Proposal, the State will by written notice to Contractor, approve, reject, or propose modifications to such Change Proposal. If the State proposes modifications, Contractor must modify and re-deliver the Change Proposal reflecting such modifications, or notify the State of any disagreement, in which event the parties will negotiate in good faith to resolve their disagreement. Upon the State’s approval of the Change Proposal or the parties’ agreement on all proposed modifications, as the case may be, the parties will execute a written agreement to the Change Proposal (“**Change Notice**”), which Change Notice will be signed by the State’s Contract Administrator and will constitute an amendment to the applicable Statement of Work.

- c. If the parties fail to enter into a Change Notice within fifteen (15) Business Days following the State's response to a Change Proposal, the State may, in its discretion:
 - i. require Contractor to provide the Services and Deliverables under the applicable Statement of Work without the Change;
 - ii. require Contractor to continue to negotiate a Change Notice;
 - iii. initiate a Dispute Resolution Procedure; or
 - iv. if the Change Request is initiated due to changes in any applicable laws or policy, then, notwithstanding any provision to the contrary in the applicable Statement of Work, terminate this Contract for cause under **Section 18**, or otherwise, terminate this Contract for convenience under **Section 19**.
- d. No Change will be effective until the parties have executed a Change Notice. Except as the State may request in its Change Request or otherwise in writing, Contractor must continue to perform its obligations in accordance with the applicable Statement of Work pending negotiation and execution of a Change Notice. Contractor will use its best efforts to limit any delays or Fee increases from any Change to those necessary to perform the Change in accordance with the applicable Change Notice. Each party is responsible for its own costs and expenses of preparing, evaluating, negotiating, and otherwise processing any Change Request, Change Proposal, and Change Notice.
- e. The performance of any functions, activities, tasks, obligations, roles and responsibilities comprising the Services or Deliverables as described in this Contract are considered part of the Services and Deliverables and, thus, will not be considered a Change. This includes the delivery of all Deliverables in accordance with their respective specifications, and the diagnosis and correction of non-conformities discovered in Deliverables prior to their Acceptance by the State or, subsequent to their Acceptance by the State, as necessary for Contractor to fulfill its associated service and maintenance obligations under this Contract.
- f. Contractor may, on its own initiative and at its own expense, prepare and submit its own Change Request to the State. However, the State will be under no obligation to approve or otherwise respond to a Change Request initiated by Contractor.

4. Intellectual Property Rights.

- a. Work Products. As to any Work Products, Contractor hereby acknowledges that the State is and will be the sole and exclusive owner of all right, title, and interest in such Work Products, and all associated Intellectual Property Rights, if any. Such Work Products are works made for hire as defined in Section 101 of the Copyright Act of 1976. To the extent any Work Products, or related Intellectual Property Rights do not qualify as works made for hire under the Copyright Act, Contractor will, and hereby does, immediately on its creation, assign, transfer and otherwise convey to the State, irrevocably and in perpetuity, throughout the universe, all right, title and interest in and to the Work Products, including all Intellectual Property Rights therein.
- b. Rights to Software and Documentation. Contractor hereby grants to the State a license to use the Software and related Documentation in accordance with the terms and conditions of this Contract and the License Agreement set forth in **Schedule B** (the "**License Agreement**").
- c. State License Grant. The State will remain the sole and exclusive owners of all right, title, and interest in and to State Materials, including all Intellectual Property Rights therein. Contractor will have no right or license to, and will not, use any State Materials except solely during the Term of this Contract for which they are provided and to the extent necessary to perform the Services and provide the Deliverables to the State. All other rights in and to the State Materials are expressly reserved by the State

5. **Support and Maintenance.** Contractor shall provide support and maintenance for the Equipment and Software in accordance with the Contract SOW.

6. **Purchase, Delivery, and Installation.**

a. Purchase Orders. The State will order the Services, Equipment, Software, or Deliverables pursuant to a signed Purchase Order issued by the State. The State reserves the right to cancel any Purchase Order at any time prior to shipment of the Deliverables or delivery of the Services and shall not be subject to any charges or other fees whatsoever as a result of such cancellation. The State may by written communication cancel or make changes to any Purchase Order subject to an equitable adjustment in the price, delivery schedule, or both, where appropriate. THE TERMS AND CONDITIONS OF THIS CONTRACT WILL APPLY AT ALL TIMES TO ANY PURCHASE ORDERS ISSUED BY THE STATE.

b. Engagement Statements of Work. The State may order additional Services and Deliverables pursuant to an Engagement SOW. For billing purposes, all Engagement SOWs must have an associated Purchase Order issued by the State. THE TERMS AND CONDITIONS OF THIS CONTRACT WILL APPLY AT ALL TIMES TO ANY ENGAGEMENT SOW ENTERED INTO BETWEEN THE PARTIES.

Engagement SOWs entered into under this Contract shall be developed and agreed to by the parties as set forth below:

i. The State shall deliver its proposed Engagement SOW to the Contractor, whereupon the Contractor shall review and approve, or raise any exceptions or clarifications to the State's proposed Engagement SOW. If Contractor raises any such exceptions, the parties shall negotiate in good faith to amend the proposal, provided that:

1. to the extent that the Contractor's response does not comply with the requirements of this Contract and the business requirements set forth in the State's proposed Engagement SOW, it shall be amended to so comply; and
2. either party may terminate negotiations if the parties fail to agree on a final Engagement SOW.

ii. Upon the parties' agreement to an Engagement SOW, each party shall cause the same to be signed by its duly authorized representative. Upon its mutual execution, the Engagement SOW shall be attached to its associated Purchase Order.

c. Delivery Procedure for Deliverables. Contractor shall deliver all Deliverables within the timeframe set forth in the applicable Purchase Order, FOB destination, with such destination being the "ship to" address as specified in the applicable Purchase Order. Contractor shall bear all risk of loss of or damage to the Deliverable until Acceptance by the State and shall arrange and pay for all transportation and insurance sufficient to fully protect the Deliverable while in transit. Each shipment shall include a packing slip indicating the State's order number, a description of the Deliverable shipped and the quantity shipped. If any loss to, or damage of, the Deliverable occurs prior to Acceptance by the State, Contractor shall immediately provide a replacement Deliverable. Contractor is responsible for filing, processing, and collecting all damage claims. The State will record and report to Contractor any evidence of visible damage. Title shall pass upon such Acceptance. Contractor shall make available all appropriate or related user Documentation at the time of delivery of the first unit of each different Deliverable type. Deliverables delivered without the appropriate and required Documentation shall be considered "shipped short" until the applicable Documentation has been received.

d. Software Installation.

- i. Unless otherwise set forth in the applicable Statement of Work or the applicable Purchase Order, Contractor will deliver, install, configure, integrate, customize, modify and otherwise provide and make fully operational the Software in accordance with the criteria set forth in the applicable Statement of Work.
- ii. Unless otherwise set forth in the applicable Statement of Work or applicable Purchase Order, Contractor is responsible for ensuring the relevant Operating Environment is set up and in working order to allow Contractor to deliver and install the Software. Contractor will provide the State with such notice as is specified in the applicable Statement of Work, prior to delivery of the Software to give the State sufficient time to prepare for Contractor's delivery, and if applicable, installation of the Software. If the State is responsible for site preparation or installation, Contractor will provide such assistance as State requests to complete such preparation and installation on a timely basis.
- iii. During the Term, Contractor shall provide the State with all Maintenance Releases and New Versions, each of which will constitute Software and be subject to the terms and conditions of this Contract, at no additional charge.
- iv. The State has no obligation to install or use any Maintenance Release or New Version. If the State wishes to install any Maintenance Release or New Version, the State shall have the right to have such Maintenance Release or New Version installed, in the State's discretion, by Contractor or other authorized party as set forth in the applicable Statement of Work.

- e. Equipment Installation. Unless otherwise specified in the applicable Statement of Work or applicable Purchase Order, Contractor shall provide the initial installation of all Equipment at no additional charge. Installation shall include: unpacking, removal of all shipping and packing materials from the premises, positioning, connecting to internal utility services, and related necessary services to allow for testing and Acceptance by the State. All Equipment installations shall comply with building and facilities standards established by the State. If the State installs the Equipment, Contractor shall provide all reasonably necessary assistance at no additional cost.

7. **Acceptance.**

- a. All Services and Deliverables are subject to inspection and testing by the State in accordance with the applicable Statement of Work and any applicable Purchase Order Requirements.
- b. Unless otherwise specified in the applicable Statement of Work, all Services and Deliverables are subject to the acceptance procedures set forth below:
 - i. All Services and Deliverables are subject to inspection and testing by the State within 30 calendar days of the State's receipt of them, or such other period as may be agreed upon in writing. The Services and Deliverables must be accepted in writing by the State's Program Manager ("**Acceptance**"). If the State finds deficiencies in the Services and Deliverables, it may: (1) demand performance at no additional cost, in the form a written notice to cure; or (2) reject the deficient Services and Deliverables without performing any further inspections, and terminate the Contract, in whole or in part, in accordance with **Section 18**, Termination for Cause.
 - ii. Within 10 Business Days from the date of Contractor's receipt of a notice to cure, or such other period as may be agreed upon in writing, Contractor must cure, at

no additional cost, the noted deficiencies and deliver acceptable Services and Deliverables to the State.

- iii. If Contractor is unable or refuses to correct the noted deficiencies within the time response standards set forth in subsection (ii) above, the State may terminate the Contract, in whole or in part, in accordance with **Section 18**, Termination for Cause. The State, or a third party identified by the State, may perform the Services and Deliverables and the State may recover the difference between the cost to cure and the Contract price plus an additional 10% administrative fee.
- iv. If the State rejects the Deliverables, Contractor must remove them from the premises within 10 Business Days, or such other period as may be agreed upon in writing, after notification of rejection. The risk of loss of rejected or non-conforming Deliverables remains with Contractor. Rejected Deliverables not removed by Contractor within the agreed to timeframe will be deemed abandoned by Contractor, and the State will have the right to dispose of it as its own property. Contractor must reimburse the State for costs and expenses incurred in storing or effecting removal or disposition of rejected Deliverables.

8. Invoicing and Payment.

- a. Invoicing. Contractor will invoice the State for Fees in accordance with the requirements set forth in the applicable Statement of Work. Contractor must submit each invoice in electronic format, via such delivery means and to such address as are specified by the State. Each separate invoice must:
 - i. clearly identify this Contract;
 - ii. list each Fee item separately;
 - iii. include sufficient detail for each line item to enable the State to satisfy its accounting and charge-back requirements;
 - iv. for Fees determined on a time and materials basis, report details regarding the number of hours performed during the billing period, the skill or labor category for such Contractor Personnel and the applicable hourly billing rates;
 - v. include such other information as may be required by the State; and
 - vi. any other requirements set forth in the applicable Statement of Work.
- b. Responsibility for Costs. Contractor is responsible for all costs and expenses incurred in or incidental to the delivery of Services and Deliverables, including all costs of any materials supplied by Contractor, all fees, fines, licenses, bonds, or taxes required of or imposed against Contractor, and all other of Contractor's costs of doing business.
- c. Payment. Invoices are due and payable by the State, in accordance with the State's standard payment procedures as specified in 1984 Public Act no. 279, MCL 17.51, *et seq.*, within forty-five (45) calendar days after receipt, provided the State determines that the invoice was properly rendered. 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/cpexpress> to receive electronic fund transfer payments. If Contractor does not register, the State is not liable for failure to provide payment.
- d. Payment Disputes. The State may withhold from payment any and all payments and amounts it disputes in good faith, pending resolution of such dispute, provided that the State:
 - i. timely renders all payments and amounts that are not in dispute;
 - ii. notifies Contractor of the dispute prior to the due date for payment, specifying in such notice (A) the amount in dispute; and, (B) the reason for the dispute set out in sufficient detail to facilitate investigation by Contractor and resolution by the parties;

- iii. works with Contractor in good faith to resolve the dispute promptly; and
 - iv. promptly pays any amount determined to be payable by resolution of the dispute.
- e. **Not to Withhold Services.** Contractor shall not withhold any Services or Deliverables or fail to perform any obligation hereunder by reason of the State's good faith withholding of any payment or amount or any dispute arising therefrom.
- f. **Firm Pricing.** Unless otherwise set forth in the applicable Statement of Work, all Fees set forth in this Contract are firm and will not be increased during the Term, or any renewal thereof.
- g. **Taxes.** The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services or Deliverables purchased under this Contract are for the State's exclusive use. Notwithstanding the foregoing, all Fees are inclusive of taxes, and Contractor is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by the State under this Contract.
- h. **Right of Setoff.** Without prejudice to any other right or remedy it may have, the State reserves the right to set off at any time any amount owing to it by Contractor against any amount payable by the State to Contractor under this Contract.
- i. **Service Credits.** Contractor acknowledges and agrees that any credits assessed pursuant to the applicable Statement of Work: (a) is a reasonable estimate of and compensation for the anticipated or actual harm to the State that may arise from the corresponding service level failure, which would be impossible or very difficult to accurately estimate; and (b) may, at the State's option, be credited or set off against any Fees or other charges payable to Contractor under this Contract or be payable to the State upon demand. No service credits for any service period may exceed the total amount of Fees that would be payable for that service period if the Services were fully provided in accordance with this Contract and the applicable Statement of Work. Credits assessed pursuant to the applicable Statement of Work will not constitute a waiver or release of any other remedy the State may have under this Contract for Contractor's breach of this Contract, including without limitation, the State's right to terminate this Contract for cause under **Section 18**, and the State will be entitled in its discretion to recover actual damages caused by Contractor's failure to perform its obligations under this Contract.
9. **Performance of Services.** Contractor will provide all Services and Deliverables in a timely, professional and workmanlike manner and in accordance with the terms, conditions, and specifications set forth in this Contract and the applicable Statement of Work.
- a. State Standards**
- i. Contractor must adhere to all applicable standards as described within the comprehensive listing of the State's existing technology standards at <http://www.michigan.gov/dmb/0,4568,7-150-56355-108233--,00.html>
 - ii. To the extent that Contractor has access to the State's computer system, Contractor must comply with the State's Acceptable Use Policy, see http://michigan.gov/cybersecurity/0,1607,7-217-34395_34476---,00.html. All Contractor personnel will be required, in writing, to agree to the State's Acceptable Use Policy before accessing the State's system. The State reserves the right to terminate Contractor's access to the State's system if a violation occurs.
 - iii. Contractor is not authorized to make changes to any State systems without prior written authorization from the State Project Manager. Any changes Contractor makes to any State systems with the State's approval must be done according to applicable State procedures, including security, access, and configuration standards.

b. Contractor Personnel

- i. Contractor is solely responsible for all Contractor personnel and for the payment of their compensation, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments and disability benefits.
- ii. Prior to any Contractor personnel performing any Services, Contractor will:
 1. ensure that such Contractor personnel have the legal right to work in the United States; and
 2. require such Contractor personnel to execute written agreements, in form and substance acceptable to the State that bind such Contractor personnel to confidentiality provisions that are at least as protective of the State's information (including all Confidential Information) as those contained in this Contract.
- iii. Contractor and all Contractor Personnel will comply with all rules, regulations, and policies of the State that are communicated to Contractor in writing, including security procedures concerning systems and data and remote access, building security procedures, including the restriction of access by the State to certain areas of its premises or systems, and general health and safety practices and procedures.
- iv. The State reserves the right to require the removal of any Contractor Personnel found, in the judgment of the State, to be unacceptable. The request must be written with reasonable detail outlining the reasons for the removal request. Replacement personnel for the removed person must be fully qualified for the position. If the State exercises this right, and Contractor cannot immediately replace the removed personnel, the parties agree to negotiate an equitable adjustment in schedule or other terms that may be affected by the required removal.

c. **Background Checks.** Upon request, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks.

d. Contractor's Key Personnel

- i. The State has the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the State of the proposed assignment, introduce the individual to the State Project Manager, and provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State will provide a written explanation including reasonable detail outlining the reasons for the rejection.
- ii. Contractor will not remove any Key Personnel from their assigned roles on this Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized

removal (“**Unauthorized Removal**”). An Unauthorized Removal does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation, or for cause termination of the Key Personnel’s employment. Any Unauthorized Removal may be considered by the State to be a material breach of this Contract, in respect of which the State may elect to terminate this Contract for cause under **Section 18**.

- e. **Subcontractors.** Contractor will not, without the prior written approval of the State, which consent may be given or withheld in the State’s sole discretion, engage any Third Party to perform Services. The State’s approval of any such Third Party (each approved Third Party, a “**Permitted Subcontractor**”) does not relieve Contractor of its representations, warranties or obligations under this Contract. Without limiting the foregoing, Contractor will:
 - i. be responsible and liable for the acts and omissions of each such Permitted Subcontractor (including such Permitted Subcontractor’s employees who, to the extent providing Services or Deliverables, shall be deemed Contractor Personnel) to the same extent as if such acts or omissions were by Contractor or its employees;
 - ii. name the State a third party beneficiary under Contractor’s Contract with each Permitted Subcontractor with respect to the Services;
 - iii. be responsible for all fees and expenses payable to, by or on behalf of each Permitted Subcontractor in connection with this Contract, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments and disability benefits

10. **Notices.** All notices and other communications required or permitted under this Contract must be in writing. Notices sent in accordance with this **Section 10** will be deemed effectively given: (a) when received, if delivered by hand (with written confirmation of receipt); (b) when received, if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by e-mail (with confirmation of transmission), if sent during normal business hours of the recipient, and on the next Business Day, if sent after normal business hours of the recipient; or (d) on the fifth (5th) day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.

<p>If to State: <i>Joshua Wilson</i> <i>525 West Allegan Street</i> <i>Lansing, MI 48909</i> WilsonJ31@michigan.gov <i>517-249-0444</i></p>	<p>If to Contractor: <i>Jamie M. Moore</i> <i>23537 Lakepointe Drive</i> <i>Clinton Twp., MI 48036</i> j.moore@jemtechgroup.com <i>586-783-3400</i></p>
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11. **Insurance Requirements.** Contractor must maintain the insurances identified below and is responsible for all deductibles. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or result from Contractor's or a subcontractor's performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and (c) be provided by a company with an A.M. Best rating of "A" or better and a financial size of VII or better.

Insurance Type	Additional Requirements
Commercial General Liability Insurance	
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations <u>Deductible Maximum:</u> \$50,000 Each Occurrence	Contractor must have their policy endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 0.
Automobile Liability Insurance	
<u>Minimal Limits:</u> \$1,000,000 Per Occurrence	
Workers' Compensation Insurance	
<u>Minimal Limits:</u> Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
<u>Minimal Limits:</u> \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease.	
Crime Insurance	
<u>Minimal Limits:</u> \$1,000,000 Employee Theft Per Loss	Contractor must have their policy: (1) cover forgery and alteration, theft of money and securities, robbery and safe burglary, computer fraud, funds transfer fraud, money order and counterfeit currency, and (2) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as Loss Payees.
Professional Liability (Errors and Omissions) Insurance	
<u>Minimal Limits:</u> \$5,000,000 Each Occurrence \$5,000,000 Annual Aggregate <u>Deductible Maximum:</u> \$50,000 Per Loss	

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

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

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

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

If extended, Contractor must supply all Services and Deliverables at the established Contract prices and terms. The State reserves the right to 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. ALL CONTRACTUAL OBLIGATIONS UNDER THIS CONTRACT IN CONNECTION WITH A PURCHASE ORDER PLACED BY A MIDEAL MEMBER ARE THE SOLE OBLIGATION OF THE MIDEAL MEMBER PLACING THE ORDER AND NOT THE RESPONSIBILITY OF THE STATE

13. **Independent Contractor.** Contractor is an independent contractor and assumes all rights, obligations and liabilities set forth in this Contract. Contractor, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the State, is responsible for the payment of wages, benefits and taxes of Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor.
14. **Assignment.** Contractor may not assign this Contract to any other party without the prior written approval of the State. Upon notice to Contractor, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party.
15. **Change of Control.** Contractor will notify the State, at least 90 calendar days before the effective date, 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.

16. **Liquidated Damages.** Liquidated damages, if applicable, will be assessed as described in the applicable Statement of Work.
17. **Stop Work Order.** The State may suspend any or all activities under the Contract at any time. The State will provide Contractor a written stop work order detailing the suspension. Contractor must comply with the stop work order upon receipt. Within 90 calendar days, or any longer period agreed to by Contractor, the State will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate the Contract. The State will not pay for Services or Deliverables, Contractor's lost profits, or any additional compensation during a stop work period.
18. **Termination for Cause.** The State may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the State: (a) endangers the value, integrity, or security of any State location, data, or personnel; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (c) engages in any conduct that may expose the State to liability; (d) breaches any of its material duties or obligations under this Contract, including but not limited to obtaining and maintaining, throughout the Term of the Contract, relevant certifications; 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 19**.

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

19. **Termination for Convenience.** The State may immediately terminate this Contract in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Services immediately, or (b) continue to perform the Services in accordance with **Section 20**. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities.
20. **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) (the "**Transition Period**"), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Services and Deliverables to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Services and Deliverables to the State or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Services at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Services and Deliverables, training, reports and other documentation, to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of the State; (d) transferring title in and delivering to the State,

at the State's discretion, all completed or partially completed Deliverables prepared under this Contract as of the Contract termination date; and (e) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.

21. **General Indemnification.** Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract; (b) any infringement, misappropriation, or other violation of any Intellectual Property Right or other right of any third party; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

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

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

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.

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

23. **Limitation of Liability.** THE STATE WILL NOT BE LIABLE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS AND LOST BUSINESS OPPORTUNITIES. IN NO EVENT WILL THE STATE'S AGGREGATE LIABILITY TO CONTRACTOR UNDER THIS CONTRACT EXCEED THE MAXIMUM AMOUNT OF FEES SPECIFIED IN THE APPLICABLE STATEMENT OF WORK.

24. **Disclosure of Litigation, or Other Proceeding.** Contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "**Proceeding**") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of the Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (e) a

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

25. State Data.

- a. The State's data ("**State Data**"), which will be treated by Contractor as Confidential Information, includes: (a) User Data; and (b) any other data collected, used, processed, stored, or generated by the State in connection with the Services and Deliverables, including but not limited to (i) personally identifiable information ("**PII**") collected, used, processed, stored, or generated as the result of the Services and Deliverables, 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) personal health information ("**PHI**") collected, used, processed, stored, or generated as the result of the Services, 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.
- b. Contractor Use of State Data. Contractor is provided a limited license to State Data for the sole and exclusive purpose of providing the Services and Deliverables, including a license to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the Services and Deliverables. Contractor must: (a) keep and maintain State Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Contract and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose State Data solely and exclusively for the purpose of providing the Services and Deliverables, such use and disclosure being in accordance with this Contract, any applicable Statement of Work, and applicable law; and (c) not use, sell, rent, transfer, distribute, or otherwise disclose or make available State Data for Contractor's own purposes or for the benefit of anyone other than the State without the State's prior written consent.
- c. Loss or Compromise of Data. In the event of any act, error or omission, negligence, misconduct, or breach on the part of Contractor that compromises or is suspected to compromise the security, confidentiality, or integrity of State Data or the physical, technical, administrative, or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality, or integrity of State Data, Contractor must, as applicable: (a) notify the State as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence; (b) cooperate with the State in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by the State; (c) in the case of PII or PHI, at the State's sole election, (i) with approval and assistance from the State, notify the affected individuals who comprise the PII or PHI as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within five (5) calendar days of the occurrence; or (ii) reimburse the State for any costs in notifying the affected individuals; (d) in the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no less than twenty-four (24) months following the date of notification to such individuals; (e) perform or take any other actions required to comply with applicable law as a result of the occurrence; (f) pay for any costs associated with the occurrence, including but not limited to any costs incurred by the State in investigating and resolving the occurrence, including reasonable attorney's fees associated with such investigation and resolution; (g) without limiting Contractor's obligations of indemnification as further described in this Contract, indemnify, defend, and hold harmless the State for any and all claims, including reasonable attorneys' fees, costs, and incidental expenses, which may be suffered by, accrued against, charged to, or recoverable from the State in connection with the occurrence; (h) be responsible

for recreating lost State Data in the manner and on the schedule set by the State without charge to the State; and (i) provide to the State a detailed plan within ten (10) calendar days of the occurrence describing the measures Contractor will undertake to prevent a future occurrence. Notification to affected individuals, as described above, must comply with applicable law, be written in plain language, not be tangentially used for any solicitation purposes, and contain, at a minimum: name and contact information of Contractor's representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Contractor has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Contractor. The State will have the option to review and approve any notification sent to affected individuals prior to its delivery. Notification to any other party, including but not limited to public media outlets, must be reviewed and approved by the State in writing prior to its dissemination.

d. The provisions of this **Section 25** survive the termination or expiration of this Contract.

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

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

b. Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; and (c) Contractor obligates the subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.

c. Cooperation to Prevent Disclosure of Confidential Information. Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person

who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.

- d. Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.
 - e. Surrender of Confidential Information upon Termination. Upon termination of this Contract or an applicable Statement of Work, in whole or in part, each party must, within 5 calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control. Should Contractor or the State determine that the return of any Confidential Information is not feasible, such party must destroy the Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other party.
27. **Data Privacy and Information Security.** Without limiting Contractor's obligation of confidentiality as further described, Contractor is responsible for establishing and maintaining a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (a) ensure the security and confidentiality of State Data; (b) protect against any anticipated threats or hazards to the security or integrity of State Data; (c) protect against unauthorized disclosure, access to, or use of State Data; (d) ensure the proper disposal of State Data; and (e) ensure that all employees, agents, and subcontractors of Contractor, if any, comply with all of the foregoing.
28. **Records Maintenance, Inspection, Examination, and Audit.** The State or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain, and provide to the State or its designee and the auditor general upon request, all financial and accounting records related to the Contract through the term of the Contract and for 4 years after the latter of termination, expiration, or final payment under this Contract or any extension ("**Audit Period**"). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.

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

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

29. **Warranties and Representations.**

- a. Authority. Contractor represents and warrants to the State that:
 - i. It is duly organized, validly existing, and in good standing as a corporation or other entity as represented under this Contract under the laws and regulations of its jurisdiction of incorporation, organization, or chartering;

- ii. It has the full right, power, and authority to enter into this Contract, to grant the rights and licenses granted under this Contract, and to perform its contractual obligations;
- iii. The execution of this Contract by its Representative has been duly authorized by all necessary organizational action; and
- iv. When executed and delivered by Contractor, this Contract will constitute the legal, valid, and binding obligation of Contractor, enforceable against Contractor in accordance with its terms.

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

- i. The prices proposed by Contractor were arrived at independently, without consultation, communication, or agreement with any other bidder for the purpose of restricting competition; the prices quoted were not knowingly disclosed by Contractor to any other bidder to the RFP; and no attempt was made by Contractor to induce any other Person to submit or not submit a proposal for the purpose of restricting competition;
- ii. All written information furnished to the State by or for Contractor in connection with this Contract, including Contractor's Bid Response, is true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make the information not misleading;
- iii. Contractor is not in material default or breach of any other contract or agreement that it may have with the State or any of its departments, commissions, boards, or agencies. Contractor further represents and warrants that it has not been a party to any contract with the State or any of its departments that was terminated by the State within the previous five (5) years for the reason that Contractor failed to perform or otherwise breached an obligation of the contract; and
- iv. If any of the certifications, representations, or disclosures made in Contractor's Bid Response change after contract award, the Contractor is required to report those changes immediately to the Contract Administrator.

b. Deliverable Representations and Warranties. Contractor further represents and warrants to the State that:

- i. Contractor is the owner or licensee of any Deliverables that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use;
- ii. all Deliverables are delivered free from any security interest, lien, or encumbrance and will continue in that respect;
- iii. the Deliverables will not infringe the patent, trademark, copyright, trade secret, or other Intellectual Property Rights of any third party;
- iv. as provided by Contractor, the Software does not or will not at any time during the license term contain any Harmful Code;
- v. Contractor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Deliverables;
- vi. the Deliverables are merchantable and fit for the specific purposes identified in the Contract;

- vii. when delivered, the Equipment and Software shall be at the current release level unless otherwise requested by the State;
- viii. all Documentation is and will be complete and accurate in all material respects when provided to the State such that at no time during the license term will any Deliverables have any material undocumented feature; and
- ix. it will perform all Services in a timely, skillful, professional and workmanlike manner in accordance with commercially reasonable industry standards and practices for similar services, using personnel with the requisite skill, experience and qualifications, and will devote adequate resources to meet its obligations under this Contract.

c. Performance Warranty.

- i. Contractor warrants that during the Term of the Contract: (A) the Equipment, Software and the Deliverables will function in all respects, in conformity with this Contract, the specifications set forth in the applicable Statement of Work, and the Documentation; and (B) all Deliverables will be free of damage or defect in design, material, and workmanship, and will remain so under ordinary use as contemplated by this Contract, the specifications set forth in the applicable Statement of Work, and the Documentation.
- ii. If the Contractor breaches any of the warranties set forth in this **Subsection 0** Contractor will, upon written notice from the State, remedy such breach in accordance with its service and maintenance obligations set forth in the applicable Statement of Work, including the time periods set forth. In the event Contractor fails to remedy such breach on a timely basis, the State will be entitled to such remedies as are specified in the applicable Statement of Work or as may otherwise be available under this Contract, at law or in equity for breach of its service and maintenance obligations. During the Warranty Period, Contractor's obligations under this section shall be at Contractor's sole cost and expense. Upon expiration of the Warranty Period, the State will pay in accordance with the fees set forth in the applicable Statement of Work.

d. A breach of this **Section 29** is considered a material breach of this Contract, which entitles the State to terminate this Contract under **Section 18**, Termination for Cause.

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

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

32. **Nondiscrimination.** Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly

related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, or mental or physical disability. Breach of this covenant is a material breach of this Contract.

33. **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.
34. **Governing Law.** This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in Michigan Court of Claims. Contractor consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint agents in Michigan to receive service of process.
35. **Non-Exclusivity.** Nothing contained in this Contract is intended nor will be construed as creating any requirements contract with Contractor. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Services or Deliverables from other sources.
36. **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.
37. **Dispute Resolution.** The parties will endeavor to resolve any Contract dispute in accordance with this provision (the “**Dispute Resolution Procedure**”). 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.
38. **Media Releases.** News releases (including promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions of the State.
39. **Severability.** If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.
40. **Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
41. **Survival.** The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Contract.
42. **Schedules.** All Schedules that are referenced herein and attached hereto are hereby incorporated by reference. The following Schedules are attached hereto and incorporated herein:

Schedule A

Statement of Work

Schedule B
Schedule C

License Agreement
Equipment List & Pricing

43. **Entire Agreement.** This Contract, which includes Schedule A – Statement of Work, and expressly incorporated schedules and exhibits, constitutes the sole and entire agreement of the parties to this Contract with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any conflict between the terms of this Contract and those of Schedule A – Statement of Work or other Schedule, the following order of precedence governs: (a) first, this Contract, excluding its schedules, exhibits, and Schedule A – Statement of Work; (b) second, Schedule A – Statement of Work as of the Effective Date; and (c) third, schedules expressly incorporated into this Contract as of the Effective Date. NO TERMS ON CONTRACTOR'S INVOICES, ORDERING DOCUMENTS, WEBSITE, BROWSE-WRAP, SHRINK-WRAP, CLICK-WRAP, CLICK-THROUGH OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS PROVIDED WITH ANY OF THE CONTRACT ACTIVITIES WILL CONSTITUTE A PART OR AMENDMENT OF THIS CONTRACT OR IS BINDING ON THE STATE 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.

STATE OF MICHIGAN

Contract No. 171-18000001130

Power, Environmental Monitoring and HVAC for State Hosting Centers and Switch Rooms

SCHEDULE A - STATEMENT OF WORK

1.000 Product/Services Identification

1.001 STATEMENT OF WORK OVERVIEW

The State of Michigan (SOM), through the Department of Technology, Management and Budget (DTMB) has issued this Contract for Power, Environmental Monitoring and HVAC for State Hosting Centers and Switch Rooms.

This Contract is broken into modules as follows:

Module 1	Power and Environmental Monitoring Break Fix and Preventative Maintenance and New Purchases at State of Michigan Hosting Centers and Switch Rooms
Module 2	HVAC Break Fix and Preventative Maintenance and New Purchases at State of Michigan Hosting Centers and Switch Rooms

➤ **Module 1**

Power and Environmental Monitoring Break Fix and Preventative Maintenance and New Purchases at State of Michigan Hosting Centers and Switch Rooms

- Maintenance, repair, purchase and support of computer room and telecommunication switch room infrastructure hardware and software components to include but not limited to:
 - uninterruptible power supply units,
 - battery cabinets,
 - static transfer switches,
 - automatic transfer switches,
 - Data Center Infrastructure management tools and systems (environmental monitoring and control software and hardware),
 - power generating systems,
 - modular busway systems,
 - fire suppression systems,
 - voltage suppression systems,
 - means to distribute power to and into the racks for use by the servers,

The State has designed current facilities using the same manufacturer’s product line throughout that facility. The State will determine whether it is in its best interest to introduce different OEM parts and products into an existing environment or maintain the same OEM parts and products throughout the facility.

The Contractor shall maintain all units under the same terms, conditions and SLA’s contained herein.

➤ **Module 2**

HVAC Break Fix and Preventative Maintenance and New Purchases at State of Michigan Hosting Centers and Switch Rooms

- Maintenance, repair, purchase and support of computer room and telecommunication switch room infrastructure hardware and software components include but not limited to:
 - air conditioning,
 - chiller systems,
 - management tools and systems,
 - heat and cooling containment systems.

The State has designed current facilities using the same manufacturer's product line throughout that facility. The State will determine whether it is in its best interest to introduce different OEM parts and products into an existing environment or maintain the same OEM parts and products throughout the facility.

The Contractor shall maintain all units under the same terms, conditions and SLA's contained herein.

The State desires to purchase both equipment and services. Exact quantities of have yet to be determined; however the contractor will be requested to furnish materials and services ordered under the terms, conditions and SLA's contained herein during the contract period. Quantities specified, if any, are estimates based on prior purchases, and the State is not obligated to purchase in these or any other quantities.

1.002 BACKGROUND

The State of Michigan's business-critical technology systems demand power and cooling support that are flexible, reliable and efficient. The solutions provided through this contract will enable DTMB to:

- Eliminate unplanned downtime relating to the power and cooling infrastructure in State data center and telecommunication facilities
- Enable fast, efficient response to changes in technology and business strategies that are related to the Data Center or Telecommunication infrastructure
- Protect and extend the State of Michigan's investment in information technology systems.
- Reduce capital and operating costs for the State of Michigan organization

The State maintains one Hosting Center and several other business critical locations around the State in support of our telephony and data processing needs. See Section 1.103 Environment, for additional details. All must be built and maintained in a fashion that strives to achieve continuous uninterrupted availability.

1.100 Scope of Work and Deliverables

1.101 IN SCOPE

The Contract(s) will provide for the purchase, maintenance and support of large data center and telecommunications switch room Power, Cooling, Environmental Monitoring and Management (PCMM) technologies. I.E. Equipment preventative maintenance checkups and repair service on new infrastructure components introduced over the duration of the contract as required by DTMB and recommended by the equipment manufacturers. The contract will allow for hardware, software and firmware upgrades that may become available as the technology and controls evolve. Additionally, the contract will account for acquiring new equipment throughout the life of the contract to permit evolving energy efficient technologies to be incorporated into the State environment. It will also account for the provisioning of additional services and products as needed.

The contract includes the following scope:

Schedule A – Statement of Work

- A. Module 1 - Acquisition and installation of new equipment and software for Power and Environmental Monitoring in State hosting centers and switch rooms as requested by the State and training
- B. Module 2 - Acquisition and installation of new equipment for HVAC in State hosting centers and switch rooms as requested by the State and training
- C. Documentation for equipment and software
- D. Reporting for ongoing contract activities
- E. Warranty for any products purchased through the Contract

A more detailed description of the software, services (work) and deliverables/requirements sought for this project is provided in Article 1, Section 1.104, Work and Deliverables.

1.102 OUT OF SCOPE

The following are considered out of scope for this Contract:

- Desktop related power or surge protection systems
- Non-computer room air conditioners

1.103 ENVIRONMENT

Enterprise IT Policies, Standards and Procedures

Contractors are advised that the State has methods, policies, standards and procedures that have been developed over the years. The Contractor shall conform to State IT policies and standards. All services and products provided through this contract must comply with all applicable State IT policies and standards.

Enterprise IT Policies, Standards and Procedures: http://www.michigan.gov/dtmb/0,4568,7-150-56355_56579_56755---,00.html

Acceptable Use Policy

To the extent that Contractor has access to the State's computer system, Contractor must comply with the State's Acceptable Use Policy, see http://michigan.gov/dtmb/0,4568,7-150-56355_56579_56755---,00.html. All Contractor Personnel will be required, in writing, to agree to the State's Acceptable Use Policy before accessing the State's system. The State reserves the right to terminate Contractor's access to the State's system if a violation occurs.

Look and Feel Standard

All software items provided by the Contractor must adhere to the Look and Feel Standards http://www.michigan.gov/documents/som/Look_and_Feel_Standards.

ADA Compliance

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

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

Agency Specific Environment

The Contractor must support the current site and equipment and software (where identified) that is provided as **Schedule C, Equipment List and Pricing**. Schedule C, is separated by Power and HVAC

Equipment. This list will be modified as existing equipment is decommissioned and new equipment is installed.

Current State equipment locations include:

- Dimondale, Michigan
- Lansing, Michigan
- Grand Rapids, MI
- Detroit, MI
- Saginaw, MI

1.104 WORK AND DELIVERABLES

It is the intent of the SOM to use this contract for the purchase, installation and maintenance of Power, Environmental Monitoring and HVAC equipment and related infrastructure components. **The SOM reserves the right to leverage other procurement vehicles for the purchase of this equipment and related services.** The SOM will review recommendations and consider purchasing of equipment off this contract; however, **the SOM is under no obligation to acquire the equipment through this contract.** **The State makes no commitment regarding the number of units that will be covered under this agreement.** The State reserves the right to adjust the number of units covered at any time to best serve the interests of the State.

Equipment Environmental Monitoring and Maintenance:

The equipment procured through this contract supports the data center and telecommunication facilities that support the State of Michigan’s information technology and telecommunication infrastructure. These services are critical in nature and the equipment on this contract must be maintained in an effective manner. It is essential that equipment be monitored and maintained in a manner that allows these facilities to continuously operate 24 hours a day, 7 days a week, and 365 days a year without unscheduled downtime.

All Equipment Solutions proposed for Module 1 or Module 2 shall be capable of integrating with State approved environmental monitoring software.

The State will consider remote software updates if proper security clearances can be obtained through the State. This will require authorization from the State. The State reserves the right to require onsite support for software updates

Preventative Maintenance:

This Contract includes equipment preventative maintenance checkups and repair service on new components introduced over the duration of the contract, as required by DTMB and recommended by the equipment manufacturers.

Preventative Maintenance Service Period:

All maintenance activities will be performed within the period either two (2) weeks prior to or two weeks after manufacturers recommend interval. For example, if a device should be serviced every 3 months – Jan. 1, April 1, July 1 and Oct 1, then the service must be performed no sooner than two weeks prior to and no later than two weeks after Jan 1, April 1, July 1 or Oct.1. The preventative maintenance checkups and repair service will be scheduled with the State of Michigan at a time that is most beneficial to the State’s business needs. Unless the State for business reasons cannot accommodate a requested service date, any service activities outside this range will be considered as “missing” a service date.

Example Tables:

Quarterly Maintenance Example (Target Date)	Earliest Date for Maintenance	Latest Date for Maintenance
01/01/XXXX	12/18/XXXX	01/15/XXXX
04/01/XXXX	03/18/XXXX	04/15/XXXX
07/01/XXXX	06/17/XXXX	07/15/XXXX

Schedule A – Statement of Work

10/01/XXXX	09/17/XXXX	10/15/XXXX
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Annual Maintenance Example (Target Date)	Earliest Date for Maintenance	Latest Date for Maintenance
01/01/XXXX	12/18/XXXX	01/15/XXXX

The preventative maintenance agreement will include all necessary parts and labor priced on a per unit basis.

A. MODULE 1 - Power and Environmental Monitoring Break Fix and Preventative Maintenance and New Purchases at State of Michigan Hosting Centers and Switch Rooms

- Acquisition and installation of new power and environmental monitoring equipment and related software.
- Maintenance and support for new and existing power and environmental monitoring equipment and related software.

The State requires that all power and environmental monitoring equipment and software required to meet future needs be available for purchase through this contract. All new and replacement parts must be manufacturer based for existing equipment. The requirements detailed below describe the requirements that the Contractor will deliver in providing these services.

A.1 - Power and Environmental Monitoring Requirements:

A.1.1 The Contractor must provide the following categories of products:

- a) Uninterruptible Power Supplies (UPS) systems
- b) Flywheel Technology
- c) Power Management and distribution systems (PDU)
- d) Static Transfer Switching systems
- e) Static transfer switches (STS)
- f) Surge Protection / TVSS
- g) Environmental monitoring solutions
- h) Batteries,
- i) Battery monitoring and management solutions
- j) Other types of Power and Monitoring equipment as the evaluation of technology dictates.

A.1.2 The Contractor must provide sales and sales engineering support to assist the State in selecting the appropriate products and planning for their deployment.

A.1.3 The Contractor must provide factory certified staff for installation, de-installation, moving Services and operational training for equipment in place at the State and all new equipment purchased through the resulting contract.

A.1.4 The Contractor must include a one-year on-site warranty and provide installation services for any new equipment in accordance with Section 1.104.E.

A.1.5 The Contractor must provide at no additional cost to the State of Michigan, one on-site operations training for the Facility staff who will be required to operate the new equipment or software.

A.1.6 Within 30 days of Contract execution, the Contractor shall schedule onsite visits to walkthrough State of Michigan data center and telecommunication facilities.

A.1.7 The Contractor shall provide 24/7/365 service with two (2) hours onsite response and thirty (30) minute assigned technician call back requirements. All service calls will be required to meet this requirement, unless otherwise agreed upon by the State at the time the service is requested.

- A.1.8** All responding technicians will be factory trained and certified for the device type they are responding to.
- A.1.9** The Contractor shall provide proof of factory certification for all equipment they are maintaining (Schedule C) for all service engineers on an annual basis (at the start of the State's fiscal year). This list will be modified as existing equipment is decommissioned and new equipment is installed.
- A.1.10** The Contractor will provide 1-800 Response Center staffed 24/7/365 for single point of contact for service dispatch requirements.

The Response Center shall have full knowledge of the contracted SLA's regarding assigned technician call back and onsite requirements. They shall also be aware of all contracted sites and that there's no need to issue a PO or credit card number before dispatching a technician

B. MODULE 2 - HVAC Break Fix and Preventative Maintenance and New Purchases at State of Michigan Hosting Centers and Switch Rooms

- **Acquisition and installation of new HVAC equipment.**
- **Maintenance and support for new and existing HVAC equipment.**

The State requires that all HVAC equipment and software required to meet future needs be available for purchase through this contract. All new and replacement parts must be manufacturer based for existing equipment. The requirements detailed below describe the requirements that the Contractor will deliver in providing these services.

B.1 - HVAC Module Requirements:

B.1.1 The Contractor must provide the following categories of products:

- a) Air Conditioning Units
- b) Steam Humidifiers
- c) Air Handlers
- d) Water Softeners
- e) Ceiling-Mounted Precision Cooling Systems
- f) VAV Units
- g) Other types of HVAC equipment as the evaluation of technology dictates

B.1.2 The Contractor must provide sales and sales engineering support to assist the State in selecting the appropriate products and planning for their deployment.

B.1.3 The Contractor must provide factory certified staff for installation, de-installation, moving Services and operational training for equipment in place at the State and all new equipment purchased through the resulting contract.

B.1.4 The Contract must provide a one-year on-site warranty and installation services for the new equipment in accordance with Section 1.104.E.

B.1.5 The Contractor must include at no additional cost to the State of Michigan, one on-site operations training for the Facility staff who will be required to operate the new equipment or software.

B.1.6 Within 30 days of Contract execution, the Contractor shall schedule onsite visits to walkthrough State of Michigan data center and telecommunication facilities.

B.1.7 The Contractor shall provide 24/7/365 service with two (2) hours onsite response and thirty (30) minute assigned technician call back requirements. All service calls will be required to meet this requirement, unless otherwise agreed upon by the State at the time the service is requested.

- B.1.8** All responding technicians will be factory trained and certified for the device type they are responding to.
- B.1.9** The Contractor shall provide proof of factory certification for all equipment they are maintaining (Schedule C) for all service engineers on an annual basis (at the start of the State's fiscal year). This list will be modified as existing equipment is decommissioned and new equipment is installed.
- B.1.10** The Contractor will provide 1-800 Response Center staffed 24/7/365 for single point of contact for service dispatch requirements.

The Response Center shall have full knowledge of the contracted SLA's regarding assigned technician call back and onsite requirements. They shall also be aware of all contracted sites and that there's no need to issue a PO or credit card number before dispatching a technician

C. Documentation

The Contractor shall provide documentation for new equipment. The State will need any documentation which provides information related to installation, upkeep, and power requirements.

C.1 - Requirements:

C.1.1 User and Installation manuals

1. A minimum of two (2) copies of the following documentation in an electronic format, online and in hard copy will be provided:
 - a. User and Technical Manuals - Online and Hard Copy
 - b. Operations Manual
 - c. All updates of documentation during the term of the contract, software license and maintenance agreement
2. The documentation of equipment and features shall be specific to the configuration of the device installed and shall be detailed such that resolution of most problems can be determined from the documentation, and most questions can be answered.
3. All system, operations, user, change and issue documentation is to be organized in a format, which is approved by the State and facilitates updating and allows for revisions to the documentation to be clearly identified including the three previous versions.
4. The Contractor must submit for State approval complete, accurate, and timely system, operations, and user documentation.
5. The Contractor must notify the State of any discrepancies or errors outlined in the system, operations, and user documentation.

C.1.2 Equipment Power Requirements

1. Contractor shall provide the documentation specifically stating the power requirements for all equipment.

D. Maintenance Reports

The Contractor shall produce a written report for the preventative maintenance and repair of all equipment that will be provided to the State within 5 business days, from date of service, to provide these reports to the State of Michigan. Reports are to include the following information:

- Summary of activity during the preventative maintenance or repair call
- Accomplishments during the preventative maintenance or repair call
- Deliverable status

- Issues
- Repair status

At the end of each fiscal year, the Contractor shall also provide an annual summary of preventative maintenance checkups and all other work performed during the year. The State and Contractor will mutually agree on the report format.

Reporting formats must be submitted to the State's Project Manager for approval within 10 business days after the execution of the Contract. Once both parties have agreed to the format of the report, it shall become the standard to follow for the duration of the contract.

E. Warranty

The Contractor will provide a minimum one (1) year all inclusive (parts, travel expenses and on-site installation, etc.) warranty on all in-warranty Power, Cooling and Monitoring equipment from the date of final acceptance. The warranty shall be provided by the manufacturer and the warranty service must include:

E.1.1 Warranty Requirements

1. Perform all warranty repairs and support services at the designated State of Michigan location, for Power, Cooling and Environmental Monitoring equipment purchased through the resulting contract.
2. Perform all warranty repairs and support services for Power, Cooling and Environmental Monitoring equipment currently installed at the State and still covered by warranty.
3. The Contractor or sub-contractors providing warranty support must be authorization by the Original Equipment Manufacturer (OEM) to perform warranty repairs on equipment.
4. All replacement parts, new or factory certified will carry the same warranty period as new.

F. Maintenance

After the warranty period, the Contractor must provide maintenance services on HVAC, Power and Environmental Monitoring equipment they have provided. The maintenance service must include at a minimum:

F.1 Preventive Maintenance

1. Perform Preventative Maintenance Services for Power, Cooling and Environmental Monitoring equipment purchased through the contract in accordance with the manufacturers specifications and/or any additional SOM requirements specified in the SOW.
2. Perform preventive maintenance on defined schedule for type of equipment.
3. Provide a Preventative Maintenance Services report to the State of Michigan, Program Manager or their designee within 5 business days of the date of service for preventive maintenance, outlining the work completed, and any unusual findings found during the maintenance. The State will provide the reporting structure and data fields that will comprise the maintenance check sheet.
4. Provide at the end of each year a written report of the summary of the findings of all the preventative maintenance checkups performed throughout the year.

F.2 Maintenance Coverage

1. Maintenance coverage will include 100% of all labor, parts and travel costs in the Contract pricing.
2. Maintenance coverage will be 7 days a week, 24 hours per day, 365 days per year with thirty (30) minute assigned technician call back and a technician on site at the State of Michigan within 2 hours of ticket creation from initial State call.
3. State sites, other than hosting centers, follow normal State working hours of 8:00 a.m. to 5:00 p.m. EST, Monday through Friday, with work performed as necessary after those hours to meet service requirements. No overtime will be authorized or paid.

F.3 Maintenance Services

1. Provide repair and support Services for Power, Cooling and Environmental Monitoring equipment in place at the State.
2. Provide 1-800 Response Center staffed 24 hours a day 7 days per week for single point of contact for service dispatch requirements.
3. Amend the Equipment List and pricing (Schedule C) through the life of the contract as equipment is added or removed from facilities.
4. Provide software support services, including installation services, and version updates.

1.200 Roles and Responsibilities

1.201 CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES

Contractor will provide sufficient qualified staffing to satisfy the deliverables of this Contract and will provide proof of certification for all service engineers on an annual basis. The Contractor will notify the State within 24hrs of any staffing changes that might require the removal or addition of staff into the hosting centers.

General Staffing Requirements for NEW Equipment Maintenance	
1	The Contractor shall provide technicians sufficient to arrive onsite within the time frames as prescribed in 1.104.F (Maintenance). All staffing shall be Factory Trained to service and maintain the equipment they have provided.

A. Key Personnel

All Key Personnel may be subject to the State’s interview and approval process. Any key staff substitution must have the prior approval of the State. The State has identified the Technical Sales Engineer, Single Point of Contact (SPOC) and Project Manager as key personnel for this Contract:

Position Title	Name
Technical Sales Engineer	Nick Notoriano
Single Point of Contact (SPOC)	Jami M. Moore
Project Manager	<i>TBD - Will be identified at time of individual project</i>

1. Technical Sales Engineer

The Contractor will provide an experienced technical sales engineer to advise and recommend new equipment and technologies. This sales engineer will work closely with the designated personnel from the State to insure a smooth transition to the new system.

Technical Sales Engineer Requirements
The Technical Sales Engineer must have a Minimum of 3 years of experience in providing sales engineering advice and recommendations to clients of similar size and scope to the State of Michigan.

2. Single Point of Contact (SPOC)

The Contractor will identify a SPOC. The duties of the SPOC shall include, but not be limited to:

- Supporting the management of the Contract,
- Facilitating dispute resolution, and
- Advising the State of performance under the terms and conditions of the Contract.

Single Point of Contact (SPOC) Requirements
The Single Point of Contact must have a minimum of 3 years of experience in handling order and delivery statuses, and resolving issues (such as configurations, price, returns, inquiries,

delivery status questions, etc.), billing/invoicing issues, warranty work, technical advice and remedial maintenance.

The Single Point of Contact shall have a minimum 5 years of experience in verbal and written communication with clients and technical staff in English. Excellent verbal and written communication skills required.

The State reserves the right to require a change in the current SPOC if the assigned SPOC is not, in the opinion of the State, adequately serving the needs of the State.

The SPOC shall be located in the United States and available Monday through Friday from 8:00 to 5:00 pm EDT to assist the State with quote requests.

3. Project Manager

At the State's request, the Contractor will provide a project manager for larger projects. The project manager will coordinate all of the activities of the Contractor personnel assigned to the project and create all reports required by State. The Contractor's project manager lead responsibilities include, at a minimum:

- Manage all defined Contractor responsibilities in this Scope of Services.
- Manage Contractor's subcontractors, if any
- Develop the project plan and schedule, and update as needed
- Serve as the point person for all project issues
- Coordinate and oversee the day-to-day project activities of the project team
- Assess and report project feedback and status
- Arrange and schedule project meetings
- Escalate project issues, project risks, and other concerns
- Review all project deliverables and provide feedback
- Proactively propose/suggest options and alternatives for consideration
- Utilize change control procedures
- Prepare project documents and materials
- Manage and report on the project's budget

B. On Site Work Requirements

1. Location of Work

The work shall be performed, completed, and managed at the State of Michigan Data Centers and telecommunication switch rooms.

2. Hours of Operation:

- a. Normal State working hours are 8:00 a.m. to 5:00 p.m. EST, Monday through Friday, with work performed as necessary after those hours to meet project deadlines. All State Hosting Centers and Telecom Switch rooms operate on a 24 x 365 continuous basis. No overtime will be authorized or paid.
- b. The State is not obligated to provide State management of assigned work outside of normal State working hours. The State reserves the right to modify the work hours in the best interest of the project.
- c. Contractor shall observe the same standard holidays as State employees. The State does not compensate for holiday pay.

3. Travel:

- a. No travel or expenses will be reimbursed. This includes travel costs related to training provided to the State by Contractor.
- b. Travel time will not be reimbursed.

4. Additional Security and Background Check Requirements:

Contractor staff requiring unescorted access (onsite or remote) must obtain satisfactory Michigan State Police Background checks and drug tests for all staff identified for assignment to this project

as requested by the State. This can include RI-8 Fingerprint Card for the National Crime Information Center (NCIC) Finger Prints. Contractor will pay for all costs associated with ensuring their staff meets all requirements. Individuals must pass the State of Michigan Criminal Justice Information Services (CJIS) policy requirements.

The Contractor and its employees shall comply with all federal and state laws, regulations, and standards (including the CJIS Security Policy) as well as with rules, procedures, and standards established by the Compact Council and the United States Attorney General.

C. Contractor Security Agreement

Upon award of the contract, the Contractor must complete and submit execute a **Contractor Security Agreement** and provide a copy of either a valid Driver License or State Identification for all personnel who will perform services at the State Data Centers and Switch Rooms.

1.202 STATE STAFF, ROLES, AND RESPONSIBILITIES

A. State Project Manager - (DTMB)

DTMB will appoint a Project Manager who will be responsible for the State's infrastructure and coordinate with the Contractor in determining the system configuration.

The State's Project Manager will provide the following services:

- Provide State facilities, as needed
- Coordinate the State resources necessary for the project
- Facilitate coordination between various external contractors
- Facilitate communication between different State departments/divisions
- Provide acceptance and sign-off of deliverable/milestone
- Review and sign-off of timesheets and invoices
- Resolve project issues
- Escalate outstanding/high priority issues
- Utilize change control procedures
- Conduct regular and ongoing review of the project to confirm that it meets original objectives and requirements
- Document and archive all important project decisions
- Arrange, schedule and facilitate State staff attendance at all project meetings.

B. State Contract Administrator - (DTMB)

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

C. State Provided Resources

The State will provide the following resources for the Contractor's use on this project:

- Minimal clerical support
- Desk
- Telephone
- Access to copiers and fax machine

1.300 Project Initiation, Planning, Management and Reporting

1.301 PROJECT PLAN MANAGEMENT AND MEETINGS

A. Project Plan

In the event of large projects, such as major renovations or the construction of a new data center, a project plan will be requested and required of the Contract. In the event a Project Plan is required, the following will apply:

1. The Project Plan will include a MS Project plan or equivalent (check the SUITE/PMM standard):
 - a. A description of the deliverables to be provided under this contract.
 - b. Target dates and critical paths for the deliverables.
 - c. Identification of roles and responsibilities, including the organization responsible.
Contractor is to provide a roles and responsibility matrix.
 - d. The labor, hardware, materials and supplies required to be provided by the State in meeting the target dates established in the Project Plan.
 - e. Internal milestones
 - f. Task durations

2. The Project Plan shall include any deliverable/milestones for which payment shall be made.

B. Orientation Meeting

Within thirty (30) days from execution of the Contract, the Contractor will be required to attend an orientation meeting to discuss the content and procedures of the Contract. The meeting will be held in Lansing, Michigan, at a date and time mutually acceptable to the State and the Contractor. The State shall bear no cost for the time and travel of the Contractor for attendance at the meeting.

C. Performance Review Meetings (Quarterly)

The State will require the Contractor to attend quarterly meetings, at a minimum, to review the Contractor's performance under the Contract. The meetings will be held in Lansing, Michigan, or by teleconference, as mutually agreed by the State and the Contractor. The State shall bear no cost for the time and travel of the Contractor for attendance at the meeting.

D. Project Control

Contractor will work jointly with the State to manage any project activities in accordance with State Unified Information Technology Environment (SUITE).

All installations will follow State Unified Information Technology Environment (SUITE) and associated methodologies. The State will provide the Project Manager and the installation processes will follow DTMB's ITIL (Information Technology Information Library) based Change Management Processes.

Contractor will use an automated tool for planning, monitoring, and tracking the Contract's progress and the level of effort of any Contractor personnel spent performing services under the Contract. Contractor will provide tool access to State-designated staff to enter issues and review data. Any tool used by the Contractor for such purposes must produce information of a type and in a manner and format that will support reporting in compliance with the State standards. The tool will have the capability to produce the following:

- Staffing tables with names of personnel assigned to Contract tasks
- Project plans showing tasks, subtasks, deliverables, and the resources required and allocated to each, including proposed services to be performed within the next two (2) weeks (updated every two weeks)
- Graphs showing critical events, dependencies and decision points during the course of the Contract

1.302 REPORTING, PROJECT MANAGEMENT

A. Reporting Format

Within fifteen (15) days of the Effective Date, Contractor must submit reporting formats to the DTMB Project Manager. When both parties have agreed to the format of the report, it becomes the standard to follow for the duration of the Contract.

Weekly Project Status to include:

- Summary of activity during the report period
- Accomplishments during the report period
- Deliverable status
- Schedule status
- Action Item status
- Issues
- Change Control

B. Issue Management

An issue is an identified event that affects the schedule, scope, quality, or budget. Contractor must maintain an issue log for issues relating to the provision of services under this Contract. The issue management log must be communicated to the DTMB Project Manager on an agreed upon schedule at a minimum of every two weeks, with email notifications and updates. The issue log must be updated and contain the following minimum elements.

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

Issues will be escalated for resolution from level 1 through level 2 as defined below:

- Level 1 – Business leads
- Level 2 – Project Managers
- Level 3 – Executive Subject Matter Experts (SME's)

C. Risk Management

A risk is an identified event that, if not addressed, may affect schedule, scope, quality or budget. The Contractor must establish a risk management plan and process, including the identification and recording of risk items, prioritization of risks, definition of mitigation strategies, monitoring of risk items, and periodic risk assessment reviews with the State.

Within fifteen (2) days of the Effective Date, Contractor must submit the risk management plan to the State. The risk management plan must be in accordance with the State's PMM methodology or Contractor's comparable format. Once both parties have agreed to the format of the plan, it becomes the standard to follow for the duration of the Contract. The plan must be updated every two weeks or as agreed upon.

Contractor must provide the tool to track risks and will work with the State to allow input into the prioritization of risks. Contractor must identify risks for each phase of the project. Mitigating and/or eliminating assigned risks is the responsibility of the Contractor, if agreed to by the State. The State assumes the same responsibility for risks assigned to the State.

1.303 CHANGE MANAGEMENT

A. Change Management

Change management is defined as the process to communicate, assess, monitor, and control all changes to system resources and processes. The State also employs change management in its administration of the Contract.

Upon request and at the State's sole option, the Contractor will provide additional services to meet requirements stated within this section. To use this mechanism, the State will submit a Statement of Work (SOW) to the Contractor for the additional services requested. For each such SOW received from the State, the Contractor will provide a written Proposal, which will include a project plan and pricing using the agreed upon rates in the Contract. Upon review and acceptance of the written

Proposal by the business owner and in accordance with the Terms and Conditions of the Contract, DTMB Procurement will prepare a Contract Change Notice for execution. A fully executed Contract Change Notice is required prior to issuance of any Purchase Order release. A Purchase Order is required prior to beginning any work or providing any goods under this Section. **Contractors who provide goods or services prior to the issuance of a Contract Change Notice and Purchase Order, risk non-payment for the out-of-scope/pricing products and/or services.**

The Contractor will employ the change control methodologies to justify changes in the processing environment, and to ensure those changes will not adversely affect performance or availability.

This section allows for changes that are significant to other tasks described in the Contract or are required in order to complete this Contract's tasks and/or objectives but are outside the Contract's defined deliverables.

1.400 Acceptance

1.401 CRITERIA

For all new hardware installs or services final acceptance is expressly conditioned upon completion of ALL deliverables/milestones, completion of ALL tasks in the project plan as approved, completion of ALL applicable inspection and/or testing procedures, and the certification by the State that the Contractor has met the defined requirements as agreed in writing by both parties.

A. Document Deliverables

1. Documents are dated and in electronic format, compatible with State of Michigan software and fully relevant to the models being provided and in English language.
2. Draft documents are not accepted as final deliverables.
3. The documents will be reviewed and accepted in accordance with the requirements of the Contract.
4. DTMB will review documents within a mutually agreed upon timeframe. In the absence of an agreed timeframe, the Contract Terms will control.
 - a. Approvals will be written and signed by the State Program Manager or their designee.
 - b. Issues will be documented and submitted to the Contractor.
 - c. After issues are resolved or waived, the Contractor will resubmit documents for approval within 30 days of receipt.

B. Software Deliverables - Software includes, but is not limited to, software product, development tools, support tools, data migration software, integration software, and installation software.

1. Beta software is not accepted as final deliverable.
2. The software will be reviewed and accepted in accordance with the requirements of the contract.
3. DTMB will review software within a mutually agreed upon timeframe for acceptance of functionality, usability, installation, performance, security, standards compliance, backup/recovery, and operation.
 - a. Approvals will be written and signed by the State Project Manager.
 - b. Unacceptable issues will be documented and submitted to the Contractor.
 - c. After issues are resolved or waived, the Contractor will resubmit software for approval within 30 days of receipt.
4. Software is installed and configured, with assistance from DTMB, in an appropriate environment (e.g. development, conversion, QA testing, UAT testing, production, and training).
5. Contingency plans, de-installation procedures, and software are provided by the Contractor and approved by the State Project Manager.
6. Final acceptance of the software will depend on the successful completion of User Acceptance Testing (UAT).
7. Testing will demonstrate the system's compliance with the requirements of the Contract. At a minimum, the testing will confirm the following:
 - a. Functional - the capabilities of the system with respect to the functions and features described in the Contract.

- b. Performance - the ability of the system to perform the workload throughput requirements. All problems should be completed satisfactorily within the allotted time frame.
8. Deliverable approval process has been followed and met.

C. Hardware Deliverables

There will be a 30 day performance and reliability evaluation period in which the system must operate successfully. This period shall start upon successful completion of all commissioning activities. Upon major failure this period will be restarted after component failure is repaired. Failure of unsuccessful operation will result in delayed payments and/or penalties to the Contractor.

1.500 Compensation and Payment

1.501 COMPENSATION AND PAYMENT

A. Method of Payment

1. The State will pay the Contractor a firm-fixed price.
 - The Contractor's pricing shall be based on receiving quarterly payments for preventative maintenance.
 - The preventative maintenance agreement will include all necessary parts and labor.
 - The Contract will include a minimum discount from MSRP on future equipment and software purchases.
 - The MSRP shall be from a Verifiable Price Index (VPI) that is controlled by the manufacturer and cannot be manipulated by the Contractor. If one does not exist, the Contractor shall identify their source for the MSRP they intend to use for applying the minimum discount to.
2. Provision for acquiring maintenance on a time and material basis for the equipment is not covered by the contract.
3. The parties agree that the Services/Deliverables to be rendered by Contractor pursuant to this Contract (and any future amendments of it) will be defined and described in detail in Statements of Work or Purchase Orders (PO) executed under this Contract. Contractor shall not be obliged or authorized to commence any work to implement a Statement of Work until authorized via a PO issued against this Contract. Contractor shall perform in accordance with this Contract, including the Statements of Work/Purchase Orders executed under it.
4. The following pertains to obtaining quotes from the Contractor:
 - Quotation requests shall be returned to the State within (4) business days, unless the State Program Manager agrees to a longer time frame in writing.
 - Contractor must insure that quotes are also available after normal State Business Hours or on State Holidays in the event the State experiences an emergency situation.
 - Quoted prices should be the Contractor's best possible offering to the State. Prices must be inclusive of all standard-shipping charges.
 - Contractor should provide unit pricing for each line item on the quote, separating equipment, material and labor costs.
 - All expedited delivery charges shall be included in the quote and described as such. Expedited delivery that occurs as a result of the Contractor's shipping error will be free of charge.
 - The Contractor shall have a process in place with the manufacturers whereby the State can directly contact the OEM's so that the State may uniquely configure hardware, obtain technical or warranty support, obtain technical guidance or expertise, and obtain information for the basis of the quotes as defined later in this document.
 - Quoted prices should be the Contractor's best possible offering to the State and must not exceed contract pricing.

B. Administrative Fee

Contractor will be required to submit a one percent (1%) Administrative Fee on all payments remitted under the Contract, including payments received from third parties leveraging the contract under Extended Purchasing Programs.

C. Travel

The State will not pay for any travel expenses, including hotel, mileage, meals, parking, etc. Travel time will not be reimbursed.

D. Most Favored Pricing

If Contractor reduces its prices for any of the software or services during the term of this Contract, the State shall have the immediate benefit of such lower prices for new purchases. Contractor shall send notice to the State’s Contract Administrator with the reduced prices within twenty-one (21) calendar days of the reduction taking effect.

E. Invoicing

Contractor will submit properly itemized invoices to

DTMB – Financial Services
Accounts Payable
P.O. Box 30026
Lansing, MI 48909

or

DTMB-Accounts-Payable@michigan.gov

The State may require additional individuals be included on the correspondence.

Invoices must provide and itemize, as applicable:

- Contract number;
- Purchase Order number
- Contractor name, address, phone number, and Federal Tax Identification Number;
- Description of any commodities/hardware, including quantity ordered;
- Date(s) of delivery and/or date(s) of installation and set up;
- Price for each item, or Contractor’s list price for each item and applicable discounts;
- Maintenance charges;
- Net invoice price for each item;
- Shipping costs;
- Other applicable charges;
- Total invoice price; and
- Payment terms, including any available prompt payment discount.

Incorrect or incomplete invoices will be returned to Contractor for correction and reissue.

1.502 HOLDBACK

The State shall have the right to hold back an amount up to **one-hundred percent (100%)** of all amounts invoiced by Contractor for Services/Deliverables. The amounts held back shall be released to Contractor after the State has granted Final Acceptance. Holdback amounts will be agreed to in each specific Statement of Work.

1.600 SERVICE CREDITS

1.601 SERVICE CREDITS

Service Credits Description

Schedule A – Statement of Work

<p>1</p>	<p>If the contractor's technicians engaged in this agreement fail to arrive onsite within the time frames as prescribed in 1.104.F (Maintenance), there will be a 2% reduction, for each occurrence, in the reported units annual maintenance cost.</p> <p>This credit will not exceed the amount of the units annual maintenance cost. It will be calculated at the end of each quarter and applied to the cost of the last invoice submitted for that contract year as a credit. Onsite arrival time will be determined by starting at the time a service request is logged at the Contractor's Customer Support Center and stops when the technician signs into the hosting center or telecommunication switch room where the affected unit is located. Credit will be applied to the last invoice submitted for that contract year.</p>
<p>2</p>	<p>If over the course of any contract year the Contractor fails to complete all manufacturers recommended service activities on a covered device, a credit will be applied for each missed activity against the last invoice submitted for that contract year. This credit will be equal to the cost of each scheduled activity. For example, if a device is to be serviced twice a year at a cost of \$2,000.00 per year and one of the service visits is missed, then a \$1,000.00 credit will be applied.</p>
<p>3</p>	<p>No unit shall be out of service due to a repair/parts issue longer than 24 clock hours. Unless approved in advance by the Program Manager (or their designee), a credit will begin once the unit has been out of service for 24 clock hours. A credit of 1% of the units annual maintenance cost for each clock hour, or portion thereof, past 24 clock hours will be applied until the unit has been verified as returned to normal operating condition by the State. This credit will not exceed the amount of the units annual maintenance cost. It will be calculated at the end of each quarter and applied to the last invoice submitted for that contract year.</p>

Schedule B – License Agreement

STATE OF MICHIGAN

Contract No. 171-18000001130

Power, Environmental Monitoring and HVAC for State Hosting Centers and Switch Rooms

SCHEDULE B – LICENSE AGREEMENT

To be provided upon SOW award.

STATE OF MICHIGAN

Contract No. 171-18000001130

Power, Environmental Monitoring and HVAC for State Hosting Centers and Switch Rooms

SCHEDULE C – EQUIPMENT LIST & PRICING

1. Pricing includes all costs, including but not limited to, any one-time or set-up charges, fees, and potential costs that Contractor may charge the State (e.g., shipping and handling, per piece pricing, and palletizing).
2. Fixed Hourly Labor Category Rates are fully loaded hourly rates that include all direct and indirect costs and profit for the Contractor to perform additional future services required by the State. Cost structures for future SOW's are expected to be based on defined milestones or deliverables.
3. All product quantities included in the pricing tables are State estimates only and do not represent a firm commitment on the State's part to purchase.

Schedule C – Equipment List & Pricing

Module 1 – Annual Maintenance Pricing

To be determined by SOW bid award.

Module 2 – Annual Maintenance Pricing

To be determined by SOW bid award.

Table 1 - Minimum Discount from MSRP by Manufacturer, Product Type and Module

Manufacturer	Product Type	Minimum % Discount from MSRP Cost (Fixed for Contract Duration)	Module 1	Module 2	Comments
Eaton Corporation	UPS/PDUs	20.0%	Yes		
Schneider Electric (APC)	UPS/PDUs	20.0%	Yes		
Schneider Electric (APC)	Cooling	20.0%		Yes	
Cummins, Cat or Kohler - Generators	Generators	10.0%	Yes		
Cummins and Asco	Transfer Switches	10.0%	Yes		
Schneider Electric (APC) - Rack in the box	Power & Cooling	20.0%	Yes	Yes	
Schneider Electric (APC) - Modular Data Center - Engineered to Order	Power/Cooling/Monitoring/Security	Not Available	Yes	Yes	
Trane	Cooling	5.0%		Yes	
Starline Busway	Power	8.0%	Yes		
Stulz	Cooling	10.0%		Yes	
Vertiv Geist	Software	20.0%	Yes		
Vertiv (Liebert)	Cooling	10.0%		Yes	
Vertiv (Emerson)	Power	10.0%	Yes		
Legrand Raritan	PDUs	20.0%	Yes		
Legrand Server Technology	PDUs	15.0%	Yes		
Zonit	In-Rack ATS	10.0%	Yes		
Motivair	Rear Door Cooling	5.0%		Yes	
Subzero, Polargy, APC, Tate	Containment	5.0%		Yes	

Schedule C – Equipment List & Pricing

“Manufacturer’s Suggested Retail Price” (‘MSRP’) mean prices recorded in a catalog, price list, schedule, or other verifiable and established record that is regularly maintained by Manufacturer and is published or otherwise available for customer inspections.

The Contractor has provided product pricing to the State for new Equipment and Software, based on a minimum percentage discount off a MSRP which will be used to establish a product’s not-to-exceed price to the State.

The Contractor may (and is encouraged) to provide additional discounts. The State reserves the right to negotiate individual transaction and agreement pricing, as it deems in its best interests. The State reserves the right to establish and use other contracts, as it deems in its best interests.

Hourly Rate Card

The State may leverage Contractor resources on a time and materials basis or use the rates provided to arrive at a reasonable fixed price for future unplanned project activities.

The hourly rates provided are firm for the duration of the Contract and all-inclusive.

	Position Title	Hourly Rate (Fixed for Contract Duration)
1	HVAC Service Technician	\$ 145.00
2	Controls Technician	\$ 155.00
3	Electrical Journeyman	\$ 115.00
4	Electrical Foreman	\$ 135.00
5	Non Mechanical or Electrical Technician	\$ 95.00

Hourly Rate Card - Time and Materials Approach

In the event of an incident with the **electric or mechanical infrastructure not currently under the fixed price portion of this contract**, the Program Manager or their designee may request the Contractor service this infrastructure on a Time and Materials basis.

The Fixed Hourly Rate Card is intended to cover electric or mechanical infrastructure that is not currently under the fixed price portion of the Contract. Usage of this rate card will be minimal, since the State desires to place all equipment purchases (including future new purchases) under a fixed Annual Price for Preventative Maintenance (this includes break/fixes).

In the event the hourly rate card is used by the State, the following shall apply:

- 1) The Contractor will appear onsite with time being of the essence.
- 2) The Contractor will assess the situation and perform the necessary action to mitigate the incident at that time.
- 3) The billable hours will be based on the actual time worked. Time starts when the Contractor logs into the State System, and ends when the Contractor logs out of the State System
- 4) If the work performed in #2, was a temporary solution, no work towards a permanent fix will begin until a Purchase Order has been issued by the State or the Program Manager has requested an expedited service. The Quote will be supplied to the State within 1 business day.

Contractor Pricing Assumptions

- All pricing is with standard manufacturers warranty. Extended warranties on all products are available.