



STATE OF MICHIGAN PROCUREMENT

Department of Technology, Management, & Budget

320 S. Walnut St.
 PO Box 30023
 Lansing, MI 48909

CONTRACT CHANGE NOTICE

Change Notice Number **1**
 to
 Contract Number **20000000148**

| | |
|-------------------|---------------------------------------|
| CONTRACTOR | Periscope Holdings, Inc. |
| | 5000 Plaza on the Lake, Ste. 100 |
| | Austin, TX 78746 |
| | Mark Eigenbauer |
| | 678-699-1832 |
| | mark.eigenbauer@periscopeholdings.com |
| | CV0062750 |

| | | | |
|------------------------|------------------------|--------------------|------|
| STATE | Program Manager | James Topping | DTMB |
| | | 517-230-4822 | |
| | toppingj@michigan.gov | | |
| | Contract Administrator | Christopher Martin | DTMB |
| martinc20@michigan.gov | | | |

| CONTRACT SUMMARY | | | | |
|--|-------------------------|---------------------------|---|-------------------|
| DESCRIPTION: NIGP Commodity Code License and Services – Site License for 7-Digit NIGP Code | | | | |
| INITIAL EFFECTIVE DATE | INITIAL EXPIRATION DATE | INITIAL AVAILABLE OPTIONS | EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW | |
| 12/20/2019 | 12/19/2023 | 6, 1-year | 12/19/2023 | |
| PAYMENT TERMS | | DELIVERY TIMEFRAME | | |
| Net 45 | | N/A | | |
| ALTERNATE PAYMENT OPTIONS | | | EXTENDED PURCHASING | |
| <input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other | | | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | |
| MINIMUM DELIVERY REQUIREMENTS | | | | |
| N/A | | | | |
| DESCRIPTION OF CHANGE NOTICE | | | | |
| OPTION | LENGTH OF OPTION | EXTENSION | LENGTH OF EXTENSION | REVISED EXP. DATE |
| <input checked="" type="checkbox"/> | 1 Year | <input type="checkbox"/> | | 12/19/2024 |
| CURRENT VALUE | | VALUE OF CHANGE NOTICE | ESTIMATED AGGREGATE CONTRACT VALUE | |
| \$62,000.00 | | \$15,965.00 | \$77,965.00 | |
| Effective 12/7/2023, the State is exercising Option Year 1 and is increased by \$15,965.00. The revised contract expiration date is 12/19/2024. | | | | |
| Please note the Contract Administrator has been changed to Christopher Martin | | | | |
| All other terms, conditions, specifications, and pricing remain the same. Per contractor and agency agreement, and DTMB Financial Services approval. | | | | |

STATE OF MICHIGAN PROCUREMENT
 Department of Technology, Management and Budget
 320 S. Walnut St.
 Lansing, MI 48933



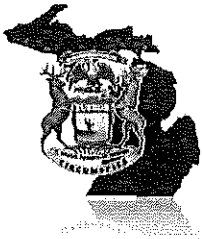
NOTICE OF CONTRACT

NOTICE OF CONTRACT NO. **200000000148**
 between
 THE STATE OF MICHIGAN
 and

| | |
|-------------------|----------------------------------|
| CONTRACTOR | Periscope Holdings, Inc. |
| | 5000 Plaza on the Lake, Ste. 100 |
| | Austin, TX 78746 |
| | David English, CFO |
| | 512.472.9062 |
| | denglish@periscopeholdings.com |
| | CV0062750 |

| | | |
|--------------|-------------------------|------|
| STATE | Christine Mitchell | DTMB |
| | 517-275-1848 | |
| | MitchellC4@michigan.gov | |
| | Chana Browning | DTMB |
| | 517-335-4070 | |
| | BrowningC@michigan.gov | |

| CONTRACT SUMMARY | | | |
|---|-------------------------|---------------------------|---|
| DESCRIPTION: NIGP Commodity Code License and Services – Site License for 7-Digit NIGP Code | | | |
| INITIAL EFFECTIVE DATE | INITIAL EXPIRATION DATE | INITIAL AVAILABLE OPTIONS | EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW |
| December 20, 2019 | December 19, 2023 | 6, 1- year | December 19, 2023 |
| 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 | | | |
| | | | |
| MISCELLANEOUS INFORMATION | | | |
| | | | |
| ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION | | | \$62,000.00 |



STATE OF MICHIGAN

CONTRACT TERMS

This Contract (the "**Contract**") is agreed to between the State of Michigan (the "**State**") and Periscope Holdings, Inc. ("**Contractor**"), a Texas corporation. This Contract is effective on December 20, 2019 ("**Effective Date**"), and unless terminated, expires on December 19, 2023, (the "**Term**").

This Contract may be renewed for up to six (6) additional one (1) year periods. Renewal must be by written notice from the State and will automatically extend the Term of this Contract.

The parties agree as follows:

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

"**Authorized Users**" means all Persons authorized by the State to access and use the Services through the State's account under this Contract, subject to the site license agreement included in this Contract.

"**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.

"**Confidential Information**" has the meaning set forth in **Section 22**.

"**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 **Section 5**.

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

"**Contractor Data**" means all data, expressly including without limitation any portion of the NIGP Code, provided by Contractor.

"**Contractor Personnel**" means all employees of Contractor or any Subcontractors involved in the performance of Services and creation of Deliverables under this Contract.

"**Deliverables**" means all means all State-specific deliverables that Contractor is required to, or otherwise does, provide to the State under this Contract including but not limited to NIGP Codes, reports, 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, including all items specifically identified as Deliverables in the Statement of Work.

"**Procurement Data**" means the State's data, datasets, and information contained in maps, reports, files, or other documentation related to the State's Purchasing and Accounting System, (SIGMA).

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

"Enterprise System" for the purposes of this Contract, means Michigan's Statewide Integrated Governmental Management Applications (SIGMA), and encompasses all registered users of the system, including employees of all State departments, divisions, bureaus and offices (including in-home State offices) and all MIDEAL users registered on the system as set forth in **Schedule A, Scope**.

"Financial Audit Period" has the meaning set forth in **Section 25**.

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

"Hosted Services" means the hosting, management and operation of the Software and other services for remote electronic access and use by the State and its Authorized Users as described in the Statement of Work.

"Intellectual Property Rights" means any and all 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) authorship rights, copyrights and copyrightable works (including computer programs) and rights in data and databases; (d) trade secrets, know-how and other confidential information; and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection provided by applicable Law in any jurisdiction throughout the world.

"Key Personnel" means any Contractor Personnel identified as key personnel in this Contract or the Statement of Work.

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

"Open-Source License" has the meaning set forth in **Section 8.d**.

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

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

"Project Manager" is the individual appointed by each party to monitor and coordinate the day-to-day activities of this Contract. Each party's Project Manager will be identified in the Statement of Work.

"**Services**" means any of the services Contractor, or any Subcontractor, is required to or otherwise does provide under this Contract as described in the Statement of Work.

"**Software**" means any and all software applications and tools, including without limitation the NIGP Living Code software, website, and search engine maintained by Contractor, and any third-party or other software, and all new versions, updates, revisions, improvements and modifications of the foregoing, that Contractor provides access to and use of as part of the Services.

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

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

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

"**State Review Period**" has the meaning set forth in **Section 12**.

"**Statement of Work**" has the meaning set forth in **Section 2**.

"**Stop Work Order**" has the meaning set forth in **Section 14**.

"**Subcontractor**" has the meaning set forth in **Section 3(e)**.

"**Transition Responsibilities**" has the meaning set forth in **Section 17**.

"**User Data**" means all data, information and other content of any type and in any format, medium or form, whether audio, visual, digital, screen, 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 audio, visual, digital or other display or output, that is generated automatically upon executing the Software without additional user input.

2. **Statement of Work.** Contractor shall provide the Services and Deliverables pursuant to the Statement of Work, attached as **Schedule A** to this Contract (the "**Statement of Work**"). The terms and conditions of this Contract will apply at all times to the Statement of Work.

3. **Performance of Services.**

a. **State Standards**

- i. **IT Policies, Standards and Procedures.** All services and products provided must comply with all applicable State IT policies and standards, which can be found at State of Michigan IT Standards and Policies.
- ii. **Look and Feel Standard.** All software items provided by the Contractor must adhere to the State of Michigan Application/Site standards which can be found at www.michigan.gov/standards.

- iii. **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 State of Michigan IT Policies and Standards. 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.
- iv. **ADA Compliance.** The State is required to comply with the Americans with Disabilities Act of 1990 (ADA), and has adopted a formal policy regarding accessibility requirements for websites and software applications. Contractor's Software and web-based Deliverables must comply, where relevant, with 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 Software and web-based Deliverables.

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

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's 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.

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 (including to create any Deliverables). The State's approval of any such third party (each approved third party, a "**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 Subcontractor (including such Subcontractor's employees who, to the extent providing Services or creating Deliverables, shall be deemed Contractor Personnel) to the same extent as if such acts or omissions were by Contractor or its employees;

ii. be responsible and liable for any and all performance required hereunder, including the proper supervision, coordination and performance of the Services and any noncompliance by any Subcontractor or its employees or agents with the provisions of this Contract or any Statement of Work will constitute a breach by Contractor;

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

iv. prior to the provision of Services or creation of Deliverables by any Subcontractor:

1. obtain from such Subcontractor a written confidentiality and restricted use agreement, giving the State rights at least equal to those set forth in **Section 21** (State Data), and **Section 22** (Confidentiality), **Section 24** (Security) and containing the Subcontractor's acknowledgment of, and agreement to, the provisions of **Section 3.b** (Contractor Personnel), a fully-executed copy of which agreement Contractor will promptly provide to the State upon the State's request;

2. obtain the identity of such Subcontractor and the location of all its data centers, if any, that will be used in Processing any State Data, which information Contractor shall promptly disclose to the State in writing.

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

| | |
|--|--|
| If to State: | If to Contractor: |
| Chana Browning 320 S. Walnut St. Lansing, MI 48933 browningc@michigan.gov 517-335-4070 | <i>Chief Financial Officer</i> <i>5000 Plaza on the Lake Suite 100</i> <i>Austin, TX 78746</i> <i>accounting@periscopeholdings.com</i> <i>877-472-9062</i> |

5. **Contract Administrators.** The Contract Administrator for each party is the only person authorized to modify any terms and conditions of this Contract and are identified below:

| | |
|--|--|
| State: | Contractor: |
| Chana Browning 320 S. Walnut St. Lansing, MI 48933 browningc@michigan.gov 517-335-4070 | <i>Chief Financial Officer</i> <i>5000 Plaza on the Lake Suite 100</i> <i>Austin, TX 78746</i> <i>accounting@periscopeholdings.com</i> <i>877-472-9062</i> |

6. **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 an 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 | Contractor must have their policy endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, |

| | |
|--|---|
| <p>\$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit</p> <p>\$2,000,000 Products/Completed Operations</p> <p><u>Deductible Maximum:</u> \$50,000 Each Occurrence</p> | <p>employees, and agents" as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 04.</p> |
| <p>Automobile Liability Insurance</p> | |
| <p><u>Minimal Limits:</u></p> <p>If a motor vehicle is used in relation to the Contractor's performance, the Contractor must have vehicle liability insurance on the motor vehicle for bodily injury and property damage as required by law.</p> | |
| <p>Workers' Compensation Insurance</p> | |
| <p><u>Minimal Limits:</u></p> <p>Coverage according to applicable laws governing work activities.</p> | <p>Waiver of subrogation, except where waiver is prohibited by law.</p> |
| <p>Employers Liability Insurance</p> | |
| <p><u>Minimal Limits:</u></p> <p>\$500,000 Each Accident</p> <p>\$500,000 Each Employee by Disease</p> <p>\$500,000 Aggregate Disease.</p> | |
| <p>Privacy and Security Liability (Cyber Liability) Insurance</p> | |
| <p><u>Minimal Limits:</u></p> <p>\$1,000,000 Each Occurrence</p> <p>\$1,000,000 Annual Aggregate</p> | <p>Contractor must have their policy cover information security and privacy liability, privacy notification costs, regulatory defense and penalties, and website media content liability.</p> |

| Professional Liability (Errors and Omissions) Insurance | |
|--|--|
| <p><u>Minimal Limits:</u></p> <p>\$1,000,000 Each Occurrence</p> <p>\$1,000,000 Annual Aggregate</p> <p><u>Deductible Maximum:</u></p> <p>\$50,000 Per Loss</p> | |

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 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 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).

7. 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.

8. Software/Hosted Services License Grants and Restrictions.

a. Contractor License Grant. Contractor hereby grants to the State and its Authorized Users, a nonexclusive, royalty-free right and license during the Term and such additional periods, if any, as Contractor is required to perform the Services under this Contract, to (i) access and use the Software and Services, provided by Contractor, including in operation with other software, hardware, systems, networks and services, for the State's business purposes under this Contract; and (ii) generate, print, copy, upload, download, store and otherwise Process all audio, visual, digital and other output, displays and other content as may result from any access to or use of the Software or Services.

- b. License Restrictions. The State will not: (a) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make the Software or Services provided by Contractor available to any third party, except as expressly permitted by this Contract; (b) copy, modify, disassemble, decompile or reverse engineer any portions of the Software or Services; (c) remove, deface or obscure any copyright, trademark notices and/or proprietary notices on the Software or Services and any copies thereof; or (d) use or authorize the use of the Software or Services provided by Contractor in any manner or for any purpose that is unlawful under applicable law.
- c. Contractor Ownership. Except for the rights and licenses granted to the State herein, Contractor or its licensors retain all rights, title and interest in and to the Software and Services.
- d. Open-Source Licenses. Any use hereunder of Open-Source Components shall be approved by the State, and if approved, governed by, and subject to, the terms and conditions of the applicable open-source license ("**Open-Source License**"). Contractor shall identify and describe in an exhibit to the Statement of Work each of the approved Open-Source Components, and include an exhibit attaching all applicable Open-Source Software Licenses or identifying the URL where these licenses are publicly available. Ownership of all Intellectual Property Rights in Open-Source Components shall remain with the respective owners thereof, subject to the State's rights under the applicable Open-Source Licenses.

9. Other Intellectual Property Rights and Licenses.

Reserved

- 10. **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.
- 11. **Change of Control**. Contractor will notify, at least 90 calendar days before the effective date, the State of a change in Contractor's organizational structure or ownership. For purposes of this Contract, a change in control means any of the following: (a) a sale of more than 50% of Contractor's stock; (b) a sale of substantially all of Contractor's assets; (c) a change in a majority of Contractor's board members; (d) consummation of a merger or consolidation of Contractor with any other entity; (e) a change in ownership through a transaction or series of transactions; (f) or the board (or the stockholders) approves a plan of complete liquidation. A change of control does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.

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

- 12. **Acceptance**. Unless otherwise provided in the Statement of Work, this Section shall control acceptance of all Services and Deliverables. Services and Deliverables are subject to inspection and testing by the State within 30 calendar days of the State's receipt of them ("**State Review Period**"). If the Services and Deliverables are not fully accepted by the State, the State will notify Contractor by the end of the State Review Period that either: (a) the Services or Deliverables are accepted, but noted deficiencies must be corrected; or (b) the Services or Deliverables are rejected. If the State finds material deficiencies, it may: (i) reject the Services or Deliverables without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate a Statement of Work in accordance with **Section 15**, Termination for Cause.

Within 10 Business Days from the date of Contractor's receipt of notification of acceptance with

deficiencies or rejection of any Services or Deliverables, Contractor must cure, at no additional cost, the deficiency and deliver acceptable Services or Deliverables to the State. If acceptance with deficiencies or rejection of the Services or Deliverables impacts the content or delivery of other non-completed Services or Deliverables, the parties must determine an agreed to number of days for re-submission that minimizes the overall impact to the Contract. However, nothing herein affects, alters, or relieves Contractor of its obligations to correct deficiencies in accordance with the time response standards set forth in this Contract.

If Contractor is unable or refuses to correct the deficiency within the time response standards set forth in this Contract, the State may cancel the Statement of Work in whole or in part. The State, or a third party identified by the State, may perform the Services and recover the difference between the cost to cure and the Contract price plus an additional 10% administrative fee.

- 13. Terms of Payment.** Invoices must conform to the requirements set forth in a Statement of Work. All undisputed amounts are payable within 45 days of the State's receipt. Contractor may only charge for Services and Deliverables performed as specified in the Statement of Work. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services and Deliverables purchased under this Contract are for the State's exclusive use. Notwithstanding the foregoing, all prices 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.

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

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

- 14. Stop Work Order.** The State may suspend any or all activities under at a Statement of Work at any time. The State will provide Contractor a written stop work order detailing the suspension (a "**Stop Work Order**"). 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 Statement of Work. The State will not pay for Services or Deliverables, Contractor's lost profits, or any additional compensation during a stop work period.
- 15. Termination for Cause.** The State may terminate this Contract, in whole or in part (including individuals Statements of Work), 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 or the Statement of Work; 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 15, Termination for Convenience**.

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. The Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys' fees, court costs, transition costs, and any costs the State incurs to procure the Services and Deliverables from other sources.

16. Termination for Convenience. The State may immediately terminate this Contract, in whole or in part (including the Statement of Work), without penalty and for any reason, including but not limited to, nonappropriation 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 16, Transition Responsibilities**. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities.

17. Transition Responsibilities. Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed 90 calendar days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Services 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, 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; and (d) 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.

18. 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; and (iii) employ its own counsel. Contractor will not, without the State's written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or

otherwise seek to terminate any claim, action, or proceeding. To the extent that any State employee, official, or law may be involved or challenged, the State may, at its own expense, control the defense of that portion of the claim.

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

- 19. Infringement Remedies.** If, in either party's opinion, any of the Services, Software, 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 or other intellectual property infringement claim, Contractor must, at its expense: (a) procure for the State the right to continue using the Services, Software, 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.

20. Limitation of Liability and Disclaimer of Damages.

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

21. State Data.

- a. Ownership. The State's data ("**State Data**," which will be treated by Contractor as Confidential Information) includes (a) User Data; (b) State Materials; (c) Procurement Data; and (d) the State's data collected, used, processed, stored, or generated as the result of the Services. 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, including all Intellectual Property Rights arising therefrom or relating thereto. This Section survives the termination of this Contract.
- b. Contractor Use of State Data.
- i. Except for Procurement Data, Contractor is provided a limited license to State Data for the sole and exclusive purpose of providing the Services, including a license to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the Services. Contractor must: (a) keep and maintain State Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Contract and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose State Data solely and exclusively for the purpose of providing the Services, such use and disclosure being in accordance with this Contract, the Statement of Work, and applicable law; and (c) not use, sell, rent, transfer, distribute, or otherwise disclose or make available State Data for Contractor's own purposes or for the benefit of

anyone other than the State without the State's prior written consent. This Section survives the termination of this Contract.

- ii. The State grants Contractor a worldwide, non-exclusive, royalty-free, perpetual license to access, reproduce, process, generate, display, and otherwise use the Procurement Data for the purpose of providing the Services, and for its own internal business purposes.
 - c. State Use of Contractor Data. Unless the Contractor Data is dedicated to the public domain, Contractor grants the State a non-exclusive, perpetual, royalty free, fully paid-up, worldwide, and sub-licensable license to all data and content provided by Contractor, including without limitation all county data provided by Contractor, for any State purposes, including for the purposes of creating derivative works and of providing copies of such data to the public. Contractor, the counties, and its licensors retain all rights, title and interest in and to their own data.
 - d. Extraction of State Data. Contractor must, within ten (10) calendar days of the State's request, provide the State, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Contractor), an extract of the State Data in the format specified by the State.
 - e. Backup and Recovery of State Data. Unless otherwise specified in Schedule A, Contractor is responsible for maintaining a backup of State Data and for an orderly and timely recovery of such data.
- 22. Non-Disclosure of Confidential Information.** The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. 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. 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.

23. 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.

24. 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. In no case will the safeguards of Contractor's data privacy and information security program be less stringent than the safeguards used by the State, and Contractor must at all times comply with all applicable State IT policies, standards, and procedures ("PSP"), of which the publicly available PSPs are located at: https://www.michigan.gov/dtmb/0,5552,7-358-82547_56579_56755---,00.html.

- a. Right of Audit by the State. Without limiting any other audit rights of the State, the State has the right to review Contractor's data privacy and information security program prior to the commencement of the Services and from time to time during the term of this Contract. During the providing of the Services, on an ongoing basis from time to time and without notice, the State, at its own expense, is entitled to perform, or to have performed, an on-site audit of Contractor's data privacy and information security program. In lieu of an on-site audit, upon request by the State, Contractor agrees to complete, within 45 calendar days of receipt, an audit questionnaire provided by the State regarding Contractor's data privacy and information security program.
- b. Audit Findings. Contractor must implement any required safeguards as identified by the State or by any audit of Contractor's data privacy and information security program.
- c. State's Right to Termination for Deficiencies. The State reserves the right, at its sole election, to immediately terminate this Contract or a Statement of Work without limitation and without liability if the State determines that Contractor fails or has failed to meet its obligations under this Section.
- d. Security Accreditation Process. If requested by the State, Contractor must assist the State with its security accreditation process through the development, completion and ongoing updating of a system security plan using the State's automated governance, risk and compliance (GRC) platform.
- e. Security Requirements for Externally Hosted Software. If the Operating Environment for the Software is externally hosted by Contractor or a subcontractor, Contractor shall comply with the security requirements set forth in **Schedule B** to this Contract.

25. 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 ("**Financial Audit Period**"). If an audit, litigation,

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

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.

26. Warranties and Representations. Contractor represents and warrants to the State that:

- a. it will perform all Services in a professional and workmanlike manner in accordance with best 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 the Statement of Work;
- b. the Contractor Data, Services and Deliverables provided by Contractor will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party;
- c. it has, and throughout the Term and any additional periods during which Contractor does or is required to perform the Services will have, the unconditional and irrevocable right, power and authority, including all permits and licenses required, to provide the Contractor Data, Services and Deliverables and grant and perform all rights and licenses granted or required to be granted by it under this Contract;
- d. all information furnished, and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading;
- e. as provided by Contractor, the Software and Contractor Data does not or will not at any time during the license term contain any Harmful Code or operate in such a way that it is developed or compiled with or linked to any Open-Source Components, other than Approved Open-Source Components specifically described in the Statement of Work;
- f. there is no settled, pending or, to Contractor's knowledge as of the Effective Date, threatened action, and it has not received any written, oral or other notice of any action (including in the form of any offer to obtain a license): (i) alleging that any access to or use of the Services, Deliverables, or Software does or would infringe, misappropriate or otherwise violate any Intellectual Property Right of any third party; (ii) challenging Contractor's ownership of, or right to use or license, any software or other materials used or required to be used in connection with the performance or receipt of the Services, or alleging any adverse right, title or interest with respect thereto; or (iii) that, if decided unfavorably to Contractor, would reasonably be expected to have an actual or potential adverse effect on its ability to perform the Services or its other obligations under this Contract, and it has no knowledge after reasonable investigation of any factual, legal or other reasonable basis for any such litigation, claim or proceeding; and
- g. Contractor is neither currently engaged in nor will engage in the boycott of a person based in or doing business with a strategic partner as described in 22 USC 8601 to 8606.

h. A breach of this Section is considered a material breach of this Contract, which entitles the State to terminate this Contract under **Section 14, Termination for Cause.**

- 27. 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.
- 28. Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations that are applicable to its performance under this Contract, including by securing and maintaining all required and appropriate visas, work permits, business licenses and other documentation and clearances necessary for performance of the Services.
- 29. 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.*, and Executive Directive 2019-09, Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex (as defined in Executive Directive 2019-09), height, weight, marital status, partisan considerations, any mental or physical disability, or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position. Breach of this covenant is a material breach of this Contract.
- 30. 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.
- 31. 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.
- 32. 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 from other sources.
- 33. 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.
- 34. Dispute Resolution.** The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Project 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.

- 35. 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.
- 36. No Third-party Beneficiaries.** This Contract is for the sole benefit of the parties and nothing herein, express or implied, is intended to or will confer on any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Contract.
- 37. 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.
- 38. Headings.** The headings in this Contract are for reference only and do not affect the interpretation of this Contract.
- 39. Counterparts.** This Contract may be executed in counterparts, each of which will be deemed an original, but all of which together are deemed to be one and the same agreement and will become effective and binding upon the parties as of the Effective Date at such time as all the signatories hereto have signed a counterpart of this Contract. A signed copy of this Contract delivered by facsimile, e-mail or other means of electronic transmission (to which a signed copy is attached) is deemed to have the same legal effect as delivery of an original signed copy of this Contract
- 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. Contract Modification.** This Contract may not be amended except by signed agreement between the parties (a "Contract Change Notice"). Notwithstanding the foregoing, no subsequent Statement of Work or Contract Change Notice executed after the Effective Date will be construed to amend this Contract unless it specifically states its intent to do so and cites the section or sections amended
- 43. Schedules.** All Schedules that are referenced herein and attached hereto are hereby incorporated by reference. The following Schedules are attached hereto and incorporated herein:

| | |
|-------------------|-------------------|
| Schedule A | Statement of Work |
| Schedule B | Pricing |
| Schedule C | License Agreement |

- 44. Entire Agreement.** This Contract, together with all Schedules, Exhibits, and the Statement of Work constitutes the sole and entire agreement of the parties to this Contract with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Contract, the Schedules, Exhibits, and the Statement of Work, the following order of precedence governs: (a) first, this Contract, excluding its Exhibits and Schedules, and the Statement of Work; and (b) second, the Schedule A - Statement of Work as of the Effective Date; and (c) third, the Exhibits and Schedules to this Contract as of the Effective Date. NO TERMS ON CONTRACTORS INVOICES, WEBSITE,

BROWSE-WRAP, SHRINK-WRAP, CLICK-WRAP, CLICK-THROUGH OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS PROVIDED WITH ANY OF THE SERVICES, OR DOCUMENTATION HEREUNDER WILL CONSTITUTE A PART OR AMENDMENT OF THIS CONTRACT OR IS BINDING ON THE STATE OR ANY AUTHORIZED USER FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE STATE AND THE AUTHORIZED USER, EVEN IF ACCESS TO OR USE OF SUCH SERVICE OR DOCUMENTATION REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.

STATE OF MICHIGAN

Contract 171-200000000148
DTMB/SIGMA NIGP Commodity Code Software and Services

SCHEDULE A STATEMENT OF WORK

This schedule identifies the requirements of this Contract. All initial capitalized terms in this Statement of Work that are not defined in this Statement of Work shall have the respective meanings given to them in the Contract.

BACKGROUND

The Statewide Integrated Governmental Management Applications (SIGMA) is the State of Michigan's Enterprise Resource Planning (ERP) system for statewide administrative functions including financial management, procurement, asset management, performance budgeting, time and expenses. The system utilizes the National Institute of Governmental Purchasing (NIGP) Commodity Code (NIGP Code) for categorizing goods and services on solicitations, vendor registration, procurement requests and award documents issued and managed through SIGMA. Department of Technology, Management and Budget (DTMB) Central Procurement Services, as the state's organization responsible for purchasing functions, policies and procedures, is purchasing the NIGP Code software and/or related services, on behalf of SIGMA for use on the Enterprise System.

SCOPE

This Contract will provide a Site-Wide License of the NIGP Code and associated services, to the State in accordance with the attached licensing agreement (Schedule C). The license will cover the State, or a successor entity, and State agencies, departments, authorities, boards, commissions, offices, colleges and universities and other authorized participants in state sponsored cooperative purchasing program located within the boundaries of the State for the purpose of record keeping (collectively referred to as "State Agencies"). The Site License will include State Agencies' access to the 3, 5 and 7 -Digit Code ("7-Digit Code").

REQUIREMENTS

Contractor will provide Software and Services to the State as follows:

1. Manage, license, maintain, and update the NIGP Code for NIGP so that the NIGP Code is kept current as current as possible and available for searching and download by the State.
2. Provide and maintain the current edition of the NIGP 7-Digit Code for the State. Updates to the NIGP Code's Master File will be made available to the State when placed on the Living Code site for downloading into the State's system. State may download the NIGP Code's Master File, as often as it desires, at its sole discretion.
3. Provide the State with up to 400 seats to the Living Code search engine for use by State Agencies.
4. Maintain a toll-free customer service telephone number for providing NIGP Code and NIGP Living Code and search engine software assistance to the State of Michigan and/or other State Agencies and Local Entities.
5. Provide access and updates to the Living Code for the State of Michigan and other State Agencies as long as the State's annual subscription to the Site-Wide License is current.

6. Provide optional Services to assign NIGP Codes either at the 3, 5 or 7-digit levels for catalogs, price lists, term contracts, inventory files, vendor files, purchase history or any other procurement data related files. Prices for coding services will be quoted and negotiated on a case by case basis but will be included in the catalog of services provided by Contractor under this Agreement. The range of per item charges for commodity coding services is between \$1.10 (one dollar and ten cents) and \$3.50 (three dollars and fifty cents) per item, depending on anticipated level of services required and other factors including the volume of items to be converted and the quality of the descriptive information associated with the items.
7. Provide optional NIGP Code training services to the State and local government users as requested and ordered by issuance of an IT Delivery Order (DOIT1), or Purchase Order (PO) at the rates described in **Schedule B – Pricing**.

1. General Requirements

1.1. Transition

Upon termination or expiration of the Contract, Contractor must, for a period of time specified by the State (not to exceed 90 Business Days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract to continue without interruption or adverse effect, and to facilitate the orderly transfer of the services to the State or its designees. Such transition assistance may include but is not limited to: (a) continuing to perform the services at the established rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable services 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 (in a format specified by the State) to the State all data stored in the solution; and (d) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts.

Contractor must provide a detailed transition-in and transition-out plan, including any roles or responsibilities expected of the State. The plan must adequately demonstrate the steps to migrate between Contractor's Solution and third-party Solutions.

2. Acceptance

2.1. Acceptance, Inspection and Testing

The State will use the following criteria to determine acceptance of the Contract Activities: Successful upload of the current NIGP 3, 5 and 7-digit codes to the SIGMA System.

3. Staffing

3.1. Contractor Representative

The Contractor must appoint a Contract Manager/Single Point of Contact (SPOC) specifically assigned to State of Michigan accounts, that will respond to State inquiries regarding the Contract Activities, answering questions related to ordering, delivery, and upload of software, etc. (the "Contractor Representative"). The Contractor must notify the Contract Administrator at least 10 calendar days before removing or assigning a new Contractor Representative.

3.2. Customer Service Toll-Free Number

The Contractor must specify its toll-free number for the State to make contact with the Contractor Representative. The Contractor Representative must be available for calls during the hours of 8 am to 5 pm EST.

3.3. Technical Support and Maintenance

The Contractor must specify its toll-free number for the State to make contact with the Contractor for technical support and maintenance. The Contractor must be available for calls and assistance during the hours of 8 am to 5 pm EST.

3.4. Work Hours

The Contractor must provide Services and Deliverables during the State's normal working hours Monday – Friday, 7:00 a.m. to 6:00 p.m. EST, and possible night and weekend hours depending on the requirements of the project.

3.5. Key Personnel

The Contractor must appoint a Contract Manager/Single Point of Contact (SPOC) who will be directly responsible for the day-to-day operations of the Contract ("Key Personnel"). Key Personnel must be specifically assigned to the State account, be knowledgeable on the contractual requirements, and respond to State inquires within 48 hours.

3.6. Disclosure of Subcontractors

If the Contractor intends to utilize subcontractors, the Contractor must disclose the following:

The legal business name; address; telephone number; a description of subcontractor's organization and the services it will provide; and information concerning subcontractor's ability to provide the Contract Activities.

The relationship of the subcontractor to the Contractor.

Whether the Contractor has a previous working experience with the subcontractor. If yes, provide the details of that previous relationship.

A complete description of the Contract Activities that will be performed or provided by the subcontractor.

4. Project Management Contractor SPOC will coordinate with SIGMA Database Administrator to oversee upload of current version of NIGP Commodity Codes and assist in resolution of any problems which may arise.

4.1. Reporting

The Contractor must provide annual reports identifying new codes added and any codes deleted from the NIGP coding system during the prior year.

5. Ordering

5.1. Authorizing Document

The appropriate authorizing document for the Contract will be DOIT1 (Delivery Order IT) or Purchase Order (PO).

6. Invoice and Payment

6.1. Invoice Requirements

All invoices submitted to the State must include: (a) date; (b) delivery order/purchase order number; (c) quantity; (d) description of the Contract Activities; (e) unit price; (f) cost of training or other services provided (if any); and (g) total price. Overtime, holiday pay, and travel expenses will not be paid.

6.2. Payment Methods

The State will make payment for Contract Activities by EFT within thirty (30) days of State's receipt of an undisputed invoice. Payment will not be considered late until day 45 at which time interest will be assessed at .75% per month

STATE OF MICHIGAN

Contract 171-20000000148
DTMB/SIGMA NIGP Commodity Code Software and Services

SCHEDULE B

PRICING

A. NIGP Pricing - Site License for 7-digit NIGP Code

1. November 1, 2019 to October 31, 2023 - \$15,500.00 per year, includes no fewer than 400 individual seat licenses.
2. Six one-year options are available, price subject to an annual license increase of 3% per year.

B. Optional NIGP Code training services

If State requests that Contractor provide training services, those trainings will be billed at the following rates:

1. Online training webinars, \$135 per hour
2. Onsite training, \$1,200 per day plus expenses

C. Optional NIGP Code Assignment services

If State requests Contractor's NIGP Code Assignment Services:

1. Prices for coding services will be quoted and negotiated on a case by case basis;
2. The range of per item charges for commodity coding services is between \$1.10 (one dollar and ten cents) and \$3.50 (three dollars and fifty cents) per item, depending on anticipated level of services required and other factors including the volume of items to be converted and the quality of the descriptive information associated with the items.

STATE OF MICHIGAN

Contract 171-200000000148
DTMB/SIGMA NIGP Commodity Code Software and Services

SCHEDULE C LICENSING AGREEMENT



THE NIGP CODE SUBLICENSE AGREEMENT

BETWEEN

PERISCOPE HOLDINGS, INC.

AND

THE STATE OF MICHIGAN

FOR THE NIGP 7-DIGIT CODE

Effective Date: October 1, 2019

I. INTRODUCTION

The National Institute of Governmental Purchasing, Inc. ("NIGP") has licensed the use of the NIGP Commodity/Services Code ("NIGP Code" or "Code"), including the 3-Digit, 5-Digit, 7-Digit, 11-Digit and the Alphabetical Index, to Periscope Holdings, Inc. ("Contractor") which sublicenses the right to use the Code on the following terms and conditions to The State of Michigan (the "State") pursuant to this Sublicense Agreement ("Agreement" or "License Agreement").

- A. The sublicense of the NIGP Code ("Site-Wide License") to the State will cover the State, or a successor entity, and all State agencies, departments, authorities, boards, commissions, offices, colleges and universities and other authorized participants in State sponsored cooperative purchasing program located within the boundaries of the State for the purpose of record keeping (collectively referred to as "State Agencies"). The Site License will include State Agencies' access to the 3, 5 and 7 -Digit Code ("7-Digit Code").

Michigan local government, municipalities, cities, townships, counties and other political subdivisions of the State ("Local Entities") participating in sponsored cooperative purchasing programs are covered to the extent required for participation in the programs, however Local Entities must license the Code from Contractor individually if they desire to use the Code for any other internal purchasing activities. Private entities are excluded from participating in this Agreement.

- B. Under this Site-Wide License, Contractor will:

1. Manage, license, maintain, and update the NIGP Code for NIGP so that the NIGP Code is kept current as current as reasonably possible and available for searching and downloading by the State.

2. Provide, maintain, and make available to the State the current edition of the NIGP 7-Digit Code. Updates to the NIGP Code's Master File will be made available to the State when placed on Contractor's Living Code site for downloading into the State's system. State may download the NIGP Code's Master File whenever and as often as it chooses during the term of this License Agreement, at the State's sole discretion.
3. Provide the State with license to 400 seats to the Living Code search engine for use by State Agencies.

Provide access and updates to the Living Code for the State of Michigan and other State Agencies as long as the State's annual subscription to the Site-Wide License is current.

Grant this Site-Wide License for the duration of this Contract. Upon cancellation, the State will provide Periscope with written confirmation of the removal of the NIGP Code from all application and database systems.

C. Copyright. The NIGP Commodity/Services Code is the product of the National Institute of Governmental Purchasing, Inc. (NIGP) and is copyrighted material. This Site-Wide License does not extend to any other source not licensed to use it. Its use is limited to the terms and conditions contained in the previously executed NIGP Code License Agreement except as modified by this Agreement.

D. Under this Site-Wide License, the State agrees to:

1. Cite copyright disclaimer if Code is published by the State of Michigan on any public website.
2. not loan, rent, lease, give, sublicense, or otherwise transfer the Code, in whole or in part, to any Person or entity except as authorized herein;
3. not make copies or other use of the Code except as expressly set forth in this Agreement;
4. not copy, alter, translate, decompile, disassemble, modify, reverse engineer or create derivative works of the Code, (Note: Derivative works is meant to cover creating a commercially available product for which the State would realize financial gain. Cross-walking to internal expenditure codes would not constitute a violation of this prohibition.);
5. treat the Code as it would any other vendor proprietary information.

E. State shall be exclusively responsible for the supervision, management, and control of its use of the Code, including, but not limited to:

1. Ensuring proper hardware and software are compatible with the Code and hierarchical Code structure to include extended Code descriptions;
2. Implementing procedures sufficient to satisfy its obligations for security under this Agreement, including appropriate control of its employees to prevent misuse, unauthorized copying, modification, or disclosure of the Code.

F. The State, based on the representations of Contractor, hereby acknowledges that to the best of its understanding and belief Contractor is the Licensee which has proprietary rights in the NIGP Code, including without limitation, the authority to sublicense under authority of NIGP. Based on the representations of Contractor, the State acknowledges that the NIGP Code is copyrighted by NIGP which Contractor is contractually obligated to protect, including the specific design, structure and logic of the NIGP Code, and their interactions employed therewith, and State agrees to use its best efforts not to disclose such copyrighted materials, except as may be authorized herein.

I. This license will become effective upon issuance of a State authorized purchase order.

Contact and Billing:

For Periscope Holdings, Inc.

For the State of Michigan

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