



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 2
to
Contract Number MA21000000696

CONTRACTOR	Yes LMS LLC
	2401 Willard Ave.
	Madison WI 53704
	Linda Hedenblad
	608-217-6771
	Linda@YesLMS.com
	CV0056950

STATE	Program Manager	Various	Various
STATE	Contract Administrator	Sarah Platte	
		5172192406	
		PlatteS3@michigan.gov	

CONTRACT SUMMARY				
E-Learning system for Vocational Rehabilitation				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE	
March 30, 2021	March 29, 2026	5 - 12 Months	March 29, 2026	
PAYMENT TERMS		DELIVERY TIMEFRAME		
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				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input type="checkbox"/>		
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$792,940.00	\$147,940.00	\$940,880.00		
DESCRIPTION				
Effective 3/26/2025, the State adds funding in the amount of \$147,940.00 for the 2025 renewal.				
All other terms, conditions, specifications, and pricing remain the same. Per Contractor and Agency agreement, DTMB Procurement, and State Administrative Board approval on 3/30/2021.				

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

AGENCY	NAME	PHONE	EMAIL
DTMB	Tina Mitchell	517-930-4993	MitchellT7@michigan.gov
LEO	Sigrid Adams	517-388-9628	AdamsS1@michigan.gov



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

CONTRACT CHANGE NOTICE

Change Notice Number **1**
 to
 Contract Number **210000000696**

CONTRACTOR	Yes LMS LLC
	2401 Willard Ave.
	Madison, WI 53704
	Linda Hedenblad
	608-217-6771
	linda@yeslms.com
	CV0056950

STATE	Program Manager	Various	LEO
	Contract Administrator	Christopher Martin (517) 643-2833 martinc20@michigan.gov	DTMB

CONTRACT SUMMARY

E-LEARNING SYSTEM FOR VOCATIONAL REHABILITATION

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
March 30, 2021	March 29, 2026	5 - 1 Year	March 29, 2026

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"/>		March 29, 2026
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$740,940.00	\$52,000.00	\$792,940.00		

DESCRIPTION

Effective 11/2/2022, the following amendment is incorporated into this Contract per attached Statement of Work. This change includes the following:

- The addition of an external facing training site with separate content for four years through the Disability Innovation Fund (DIF) for four years. The cost per year is \$13,000.00.

This Contract is increased by \$52,000.00 for LEO/MRS use.

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

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

AGENCY	NAME	PHONE	EMAIL
LEO	Tammi Williams	517-230-6505	WilliamsT13@michigan.gov
DTMB	Tina Mitchell	517-241-9629	MitchellT7@michigan.gov



**MICHIGAN DEPARTMENT OF TECHNOLOGY,
MANAGEMENT AND BUDGET
IT SERVICES
STATEMENT OF WORK FOR IT CHANGE NOTICES**

Project Title: YesLMS: Learning Management System for project STEMM-Up	Period of Coverage: 10/1/2022-9/30/2026
Requesting Department: Michigan Department of Labor and Economic Opportunity-Michigan Rehabilitation Services	Date: 9/9/2022
Agency Project Manager: Tammi Williams	Phone: 517.230.6505
DTMB Project Manager: Tina Mitchell	Phone: 517-930-4993

Brief Description of Services to be provided:

This project requires a learning platform for the DIF-funded services.

BACKGROUND:

LEO MRS uses YesLMS to provide learning opportunities to users of all abilities via the use of its universal accessible Learning Manager System. LEO-MRS engages YesLMS to provide specific services that allows LEO-MRS to create their on-demand Vocational Rehabilitation learning management training.

PROJECT OBJECTIVE:

In October 2021, LEO-MRS was awarded funding by the US Rehabilitation Services Administration through the Disability Innovation Fund (DIF) for the LEO-MRS-proposed STEMM-Up project. This project aims to create and strengthen career pathways into Science, Technology, Engineering, Mathematics, and Medicine (STEMM) for individuals with disabilities from racial/ethnic and other marginalized communities (IWD-REM) in the post-pandemic world of work.

Trainings are a major component of this project. The project proposed to RSA is based in Social Cognitive Career Theory (SCCT) and include training modules that will need to be completed by participants eligible for vocational rehabilitation (VR) services. LEO-MRS is requesting to use the YesLMS Learning Management Platform to train and provide resources for up to 650 vocational rehabilitation (VR) customers that are eligible for DIF-funded services.

LEO MRS is seeking an additional parallel external site in conjunction with the Learning Management System (YesLMS) with its own separate content (identified above) for integration into on-demand, self-paced courses, recording of live conference sessions, and is requesting access to the YesLMS platform to achieve this goal.

SCOPE OF WORK:

An additional website is being added for utilization with students and vendors in providing STEMM-Up support services funded by the DIF grant.

TASKS:

Technical support is required to assist with the following tasks:

- DIF project planning.
- YesLMS DIF specific Technical Assistance.

DELIVERABLES:

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

- YesLMS DIF-specific learning management platform.

ACCEPTANCE CRITERIA:

Acceptance criteria remain the same as described in the original contract.

PROJECT CONTROL AND REPORTS:

A bi-weekly progress report must be submitted to the Agency and DTMB Project Managers throughout the life of this project. This report may be submitted with the billing invoice. Each bi-weekly progress report must contain the following:

1. **Accomplishments:** Indicate what was worked on and what was completed during the current reporting period.

SPECIFIC DEPARTMENT STANDARDS:

Agency standards, if any, in addition to DTMB standards.

PAYMENT SCHEDULE:

Payment will be made upon receipt of properly completed invoice(s) which shall be submitted to the billing address on the State issued Delivery Order. DTMB Accounts Payable area will coordinate obtaining Agency and DTMB Project Manager approvals. All invoices should reflect actual work completed by payment date, and must be approved by the Agency and DTMB Project Manager prior to payment. The invoices shall describe and document to the State's satisfaction a description of the work performed, the progress of the project, and fees. When expenses are invoiced, receipts will need to be provided along with a detailed breakdown of each type of expense.

Payment shall be considered timely if made by DTMB within forty-five (45) days after receipt of properly completed invoices.

EXPENSES:

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

PROJECT CONTACTS:

The designated Agency Project Manager is:

Name: Tammi Williams
Department: Michigan Department of Labor and Economic Opportunity
Area: Michigan Rehabilitation Services
Address: 1048 Pierpont St.
City/State/Zip: Lansing, MI 48911
Phone Number: 517.230.6505
Email address: Williamst13@michigan.gov

The designated DTMB Project Manager is:

Name: Tina Mitchell
Department: DTMB
Area: LEO

Building/Floor: Van Wagoner
Address: 425 W Ottawa St
City/State/Zip: Lansing, MI 48933
Phone Number: 517-930-4993
Email address: MitchellT7@michigan.gov

The designated YesLMS Onboarding is:

Name: Mike Rafferty
 Email: miker@yeslms.com

The designated YesLMS Financing Manager is:

Name: Chris Stephens
 Email: chris@yeslms.com

The designated YesLMS Contract Administrator is:

Name: Maira Gimenes
 Email: maira@yeslms.com

AGENCY RESPONSIBILITIES:

No additional responsibilities.

LOCATION OF WHERE THE WORK IS TO BE PERFORMED:

Consultants will work remotely from Madison, Wisconsin and Fishers, Indiana.

EXPECTED CONTRACTOR WORK HOURS AND CONDITIONS:

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

No overtime will be permitted.

PROJECT PLAN: (examples listed in table below)

Tasks & Deliverables	Requirements	Anticipated Start Date	Anticipated Completion Date	Contract or Staff	Role	Rate	Total	Acceptance / Signoff	Total Payment
System Setup 12-months access to YesLMS platform of up to 650 active users Broken into the following fiscal years: FY'23 \$13,000	YesLMS will gather the information needed from DIF to setup the system	11/14/22	Within 5 business days from the anticipated start date upon approvals	Project Manager	Onboarding	System Setup Fee \$1,000 (Waived) Subscription \$13,000 per FY (\$2 per user x 650 per month x10 (2 months free per FY))	\$13,000 per FY	State PM & Project Sponsor	\$13,000 per FY

Tasks & Deliverables	Requirements	Anticipated Start Date	Anticipated Completion Date	Contract or Staff	Role	Rate	Total	Acceptance / Signoff	Total Payment
FY'24 \$13,000 FY'25 \$13,000 FY'26 \$13,000									
Task I DIF Project Planning	DIF project kickoff meeting	Within 5 business days from the anticipated start date upon approvals		Project Manager				State PM & Project Sponsor	
Task II Technical Assistance Develop a parallel site in conjunction with the current Learning management system for external services with on-demand training	Technical Assistance with the YesLMS platform till the end of the contract in FY26	Within 5 business days from the project kickoff	TBD	Consultant				State PM & Project Sponsor	
TOTAL									FY'23 \$ 13000 FY '24 \$ 13,000 FY'25 \$ 13,000 FY'26 \$ 13,000



STATE OF MICHIGAN PROCUREMENT
 Department of Technology, Management, & Budget
 525 West Allegan Street
 PO Box 30026
 Lansing, MI 48909

NOTICE OF CONTRACT

NOTICE OF CONTRACT NO. **210000000696**
 between
 THE STATE OF MICHIGAN
 and

CONTRACTOR	YesLMS, LLC
	2401 Willard Ave.
	Madison, WI 53704
	Linda Hedenblad
	608-217-6771
	Linda@YesLMS.com
	CV0056950

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

CONTRACT SUMMARY			
E-Learning System for Vocational Rehabilitation			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
3/30/2021	3/29/2026	5, 1-year	3/29/2026
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			
Ad Board Approval on 3/30/2021			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION		\$740,940.00	

Program Managers
for
Multi-Agency and Statewide Contracts

AGENCY	NAME	PHONE	EMAIL
DTMB	Tina Mitchell	517-241-9629	mitchellt7@michigan.gov
LEO	Tammi Williams	517-230-6505	williamst13@michigan.gov

FOR THE CONTRACTOR:

Company Name

Authorized Agent Signature

Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature

Name & Title

Agency

Date

STATE OF MICHIGAN

SOFTWARE TERMS AND CONDITIONS

These Terms and Conditions, together with all Schedules (including the Statement(s) of Work), Exhibits and any other applicable attachments or addenda (Collectively this "Contract") are agreed to between the State of Michigan (the "State") and Yes LMS ("Contractor"), a Wisconsin Limited Liability Corporation. This Contract is effective on 3/30/2021 ("Effective Date"), and unless terminated, will expire on 3/29/2026 (the "Term").

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Contractor’s Bid Response” means the Contractor’s proposal submitted in response to the Solicitation Type.

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

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

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

“Customization” means State-specific changes to the Software’s underlying Source Code or structural data model changes.

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

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

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

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

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

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

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

“Harmful Code” means any software, hardware or other technologies, devices or means, the purpose or effect of which is to: (a) permit unauthorized access to, or to destroy, disrupt, disable, encrypt, modify, copy, or otherwise harm or impede in any manner, any (i) computer, software, firmware, data, hardware, system or network, or (ii) any application or function of any of the foregoing or the integrity, use or operation of any data Processed thereby; or (b) prevent the State or any Authorized User from accessing or using the Services as intended by this Contract, and includes any virus, bug, trojan horse, worm, backdoor or other malicious computer code and any time bomb or drop dead device.

“**HIPAA**” has the meaning set forth in **Section 21.1**.

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

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

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

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

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

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

“**Maintenance Release**” means any update, upgrade, 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.

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

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

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

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

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

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

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

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

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

“Pricing Schedule” means the schedule attached as **Schedule B**.

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

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

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

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

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

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

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

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

“Specifications” means, for the Software, the specifications collectively set forth in the Business Requirements Specification, Technical Specification, Documentation, Request for Proposal or Contractor's Bid Response, if any, for such Software, or elsewhere in a Statement of Work.

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

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

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

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

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

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

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

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

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

“**Support Services Commencement Date**” means, with respect to the Software, the date on which the Warranty Period for the Software expires, and fees for support become applicable, or such other date as may be set forth in a Statement of Work.

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

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

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

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

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

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

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

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

executing the Software without additional user input without the inclusion of user derived Information or additional user input.

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

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

“**Work Product**” means all State-specific deliverables that Contractor is required to, or otherwise does, provide to the State under this Contract including but not limited to Customizations, application programming interfaces, 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. Duties of Contractor. Contractor will provide Services and Deliverables pursuant to Statement(s) of Work entered into under this Contract. Contractor will provide all Services and Deliverables in a timely, professional manner and in accordance with the terms, conditions, and Specifications set forth in this Contract and the Statement(s) of Work.

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

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

(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) an amended Implementation Plan reflecting: (A) the schedule for commencing and completing any additional or modified Services or Deliverables; and (B) the effect of such Changes, if any, on completing any other Services under a Statement of Work;
- (iii) any additional State Resources Contractor deems necessary to carry out such Changes; and
- (iv) any increase or decrease in Fees resulting from the proposed Changes, which increase or decrease will reflect only the increase or decrease in time and expenses Contractor requires to carry out the Change.

(b) Within 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 a Statement of Work to which it relates; and

(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 perform the Services under a Statement of Work without the Change;
- (ii) require Contractor to continue to negotiate a Change Notice;
- (iii) initiate a Dispute Resolution Procedure; or
- (iv) notwithstanding any provision to the contrary in a Statement of Work, terminate this Contract under **Section 16.1**.

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

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

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

2.3 Contractor Personnel.

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

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

- (i) ensure that such Contractor Personnel have the legal right to work in the United States;
- (ii) upon request, 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; and
- (iii) upon request, or as otherwise specified in a Statement of Work, perform background checks on all Contractor Personnel 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 on Contractor Personnel. Pursuant to Michigan law, all agencies subject to IRS Pub. 1075 are required to ask the Michigan State Police to perform fingerprint background checks on all employees, including Contractor and subcontractor employees, who may have access to any database of information maintained by the federal government that contains confidential or personal information, including, but not limited to, federal tax information. Further, pursuant to Michigan law, any agency described above is prohibited from providing Contractors or subcontractors with the result of such background check. For more information, please see Michigan Public Act 427 of 2018.

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

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

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

(a) Contractor Project Manager must:

- (i) have the requisite authority, and necessary skill, experience, and qualifications, to perform in such capacity;
- (ii) be responsible for overall management and supervision of Contractor's performance under this Contract; and
- (iii) be the State's primary point of contact for communications with respect to this Contract, including with respect to giving and receiving all day-to-day approvals and consents.

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

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

- (i) the State requests in writing the removal of Contractor Project Manager;
- (ii) the State consents in writing to any removal requested by Contractor in writing;
- (iii) Contractor Project Manager ceases to be employed by Contractor, whether by resignation, involuntary termination or otherwise.

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

2.5 Contractor's Key Personnel.

(a) 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 Program Managers or their designees, 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.

(b) 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 16.1**.

(c) It is further acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of this Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to determine and remedy the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under **Section 16**, Contractor will issue to the State an amount equal to \$25,000 per individual (each, an "**Unauthorized Removal Credit**").

(d) Contractor acknowledges and agrees that each of the Unauthorized Removal Credits assessed under **Section 2.5(c)** above: (i) is a reasonable estimate of and compensation for the anticipated or actual harm to the State that may arise from the Unauthorized Removal, which would be impossible or very difficult to accurately estimate; and (ii) may, at the State's option, be credited or set off against any Fees or other charges payable to Contractor under this Contract.

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

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

(b) name the State a third-party beneficiary under Contractor's Contract with each Permitted Subcontractor with respect to the Services;

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

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

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

If to State: Christopher Martin 525 W. Allegan St. PO Box 30026 Lansing, MI 48909 martinc20@michigan.gov 517-643-2833	If to Contractor: Linda Hedenblad 2401 Willard Ave Madison WI, 53704 Linda@YesLMS.com 608-217-6771
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4. Insurance. Contractor must maintain the minimum insurances identified in the Insurance Schedule attached as **Schedule C**.

5. Software License.

5.1 Reserved.

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

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

- (i) access and use the Software, including in operation with other software, hardware, systems, networks and services, for the State’s business purposes, including for Processing State Data;
- (ii) generate, print, copy, upload, download, store and otherwise Process all GUI, audio, visual, digital and other output, displays and other content as may result from any access to or use of the Software;
- (iii) prepare, reproduce, print, download and use a reasonable number of copies of the Specifications and Documentation for any use of the Software under this Contract; and
- (iv) access and use the Software for all such non-production uses and applications as may be necessary or useful for the effective use of the Software hereunder, including for purposes of analysis, development, configuration, integration, testing, training, maintenance, support and repair, which access and use will be without charge and not included for any purpose in any calculation of the State’s or its Authorized Users’ use of the Software, including for purposes of assessing any Fees or other consideration payable to Contractor or determining any excess use of the Software as described in **Section 3.2(c)** below.

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

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

5.3 Certification. To the extent that a License granted to the State is not unlimited, Contractor may request written certification from the State regarding use of the Software for the sole purpose of verifying compliance with this **Section 5**. Such written certification may occur no more than once in any twenty-four (24) month period during the Term of the Contract. The State will to respond to any such request within 45 calendar days of receipt. If the State’s use is greater than contracted, Contractor may invoice the State for any unlicensed use (and related support)

pursuant to the terms of this Contract at the rates set forth in **Schedule B**, and the unpaid license and support fees shall be payable in accordance with the terms of the Contract. Payment under this provision shall be Contractor's sole and exclusive remedy to cure these issues.

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

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

7. Intellectual Property Rights

7.1 Ownership Rights in Software

- (a) For purposes of this **Section 7** only, the term "Software" does not include Customizations.
- (b) Subject to the rights and licenses granted by Contractor in this Contract and the provisions of **Section**

7.1(c):

- (i) Contractor reserves and retains its entire right, title and interest in and to all Intellectual Property Rights arising out of or relating to the Software; and
- (ii) none of the State or Authorized Users acquire any ownership of Intellectual Property Rights in or to the Software or Documentation as a result of this Contract.

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

7.2 The State is and will be the sole and exclusive owner of all right, title, and interest in and to all Work Product developed exclusively for the State under this Contract, including all Intellectual Property Rights. In furtherance of the foregoing:

(a) Contractor will create all Work Product as work made for hire as defined in Section 101 of the Copyright Act of 1976; and

(b) to the extent any Work Product, or Intellectual Property Rights do not qualify as, or otherwise fails to be, work made for hire, Contractor hereby:

- (i) assigns, transfers, and otherwise conveys to the State, irrevocably and in perpetuity, throughout the universe, all right, title, and interest in and to such Work Product, including all Intellectual Property Rights; and
- (ii) irrevocably waives any and all claims Contractor may now or hereafter have in any jurisdiction to so-called "moral rights" or rights of *droit moral* with respect to the Work Product.

8. Software Implementation.

8.1 Implementation. Contractor will as applicable; deliver, install, configure, integrate, and otherwise provide and make fully operational the Software on or prior to the applicable Milestone Date in accordance with the criteria set forth in a Statement of Work and the Implementation Plan.

8.2 Site Preparation. Unless otherwise set forth in a Statement of Work, 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 on or prior to the applicable Milestone Date. Contractor will provide the State with such notice as is specified in a Statement of Work, prior to delivery of the Software to give the State sufficient time to prepare for Contractor's delivery and installation of the Software. If the State is responsible for Site preparation, Contractor will provide such assistance as the State requests to complete such preparation on a timely basis.

9. Software Acceptance Testing.

9.1 Acceptance Testing.

(a) Unless otherwise specified in a Statement of Work, upon installation of the Software, or in the case of Contractor Hosted Software, when Contractor notifies the State in writing that the Hosted Services are ready for use in a production environment, Acceptance Tests will be conducted as set forth in this **Section 9** to ensure the Software conforms to the requirements of this Contract, including the applicable Specifications and Documentation.

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

- (i) for Acceptance Tests conducted by the State, if requested by the State, Contractor will make suitable Contractor Personnel available to observe or participate in such Acceptance Tests; and
- (ii) for Acceptance Tests conducted by Contractor, the State has the right to observe or participate in all or any part of such Acceptance Tests.

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

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

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

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

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

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

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

- (i) notify Contractor in writing of Non-Conformities the State has observed in the Software and of the State's non-acceptance thereof, whereupon the parties' rights, remedies and obligations will be as set forth in **Section 9.4** and **Section 9.5**; or
- (ii) provide Contractor with a written notice of its Acceptance of such Software, which must be signed by the State Program Managers or their designees.

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

- (a) completion of such Acceptance Tests, in the case of Acceptance Tests conducted by Contractor; or
- (b) receipt of the State's notice under **Section 9.1(a)** or **Section 9.3(c)(i)**, identifying any Non-Conformities.

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

- (a) continue the process set forth in this **Section 9**;
- (b) accept the Software as a nonconforming deliverable, in which case the Fees for such Software will be reduced equitably to reflect the value of the Software as received relative to the value of the Software had it conformed; or
- (c) deem the failure to be a non-curable material breach of this Contract and a Statement of Work and terminate this Contract for cause in accordance with **Section 16.1**.

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

10. Non-Software Acceptance.

10.1 All other non-Software 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"), unless otherwise provided in the Statement of Work. If the non-Software 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 non-Software Services and Deliverables are accepted but noted deficiencies must be corrected; or (b) the non-Software Services and Deliverables are rejected. If the State finds material deficiencies, it may: (i) reject the non-Software Services and Deliverables without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate this Contract in accordance with **Section 16.1**, Termination for Cause.

10.2 Within 10 business days from the date of Contractor's receipt of notification of acceptance with deficiencies or rejection of any non-Software Services and Deliverables, Contractor must cure, at no additional cost, the deficiency and deliver unequivocally acceptable non-Software Services and Deliverables to the State. If acceptance with deficiencies or rejection of the non-Software Services and Deliverables impacts the content or delivery of other non-completed non-Software Services and Deliverables, the parties' respective Program Managers must determine an agreed to number of days for re-submission that minimizes the overall impact to the Contract. However, nothing herein affects, alters, or relieves Contractor of its obligations to correct deficiencies in accordance with the time response standards set forth in this Contract.

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

11. Assignment. Contractor may not assign this Contract to any other party without the prior approval of the State. Upon notice to Contractor, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party. If the State determines that a novation of the Contract to a third party is necessary, Contractor will agree to the novation and provide all necessary documentation and signatures.

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

- (a) a sale 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.

13. Invoices and Payment.

13.1 Invoices must conform to the requirements communicated from time-to-time by the State. All undisputed amounts are payable within 45 days of the State's receipt. Contractor may only charge for Services and Deliverables provided as specified in Statement(s) of Work. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services 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.

13.2 The State has the right to withhold payment of any disputed amounts until the parties agree as to the validity of the disputed amount. The State will notify Contractor of any dispute within a reasonable time. Payment by the State will not constitute a waiver of any rights as to Contractor's continuing obligations, including claims for deficiencies or substandard Services and Deliverables. Contractor's acceptance of final payment by the State

constitutes a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still disputed.

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

13.4 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.

13.5 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 exclusive of taxes, and Contractor is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by the State under this Contract.

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

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

(b) Excluding federal government charges and terms. Contractor warrants and agrees that each of the Fees, economic or product terms or warranties granted pursuant to this Contract are comparable to or better than the equivalent fees, economic or product term or warranty being offered to any commercial or government customer of Contractor. If Contractor enters into any arrangements with another customer of Contractor to provide the products or services, available under this Contract, under more favorable prices, as the prices may be indicated on Contractor's current U.S. and International price list or comparable document, then this Contract will be deemed amended as of the date of such other arrangements to incorporate those more favorable prices, and Contractor will immediately notify the State of such Fee and formally memorialize the new pricing in a Change Notice.

14. Liquidated Damages.

14.1 The parties agree that any delay or failure by Contractor to timely perform its obligations in accordance with the Implementation Plan and Milestone Dates agreed to by the parties will interfere with the proper and timely implementation of the Software, to the loss and damage of the State. Further, the State will incur major costs to perform the obligations that would have otherwise been performed by Contractor. The parties understand and agree that any liquidated damages Contractor must pay to the State as a result of such nonperformance are described in a Statement of Work, and that these amounts are reasonable estimates of the State's damages in accordance with applicable law.

14.2 The parties acknowledge and agree that Contractor could incur liquidated damages for more than one event if Contractor fails to timely perform its obligations by each Milestone Date.

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

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

15. Stop Work Order. The State may, at any time, order the Services of Contractor fully or partially stopped for up to ninety (90) calendar days at no additional cost to the State. The State will provide Contractor a written notice detailing such suspension (a “**Stop Work Order**”). Contractor must comply with the Stop Work Order upon receipt. Within 90 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 this Contract. The State will not pay for any Services, Contractor’s lost profits, or any additional compensation during a stop work period.

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

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

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

- (i) endangers the value, integrity, or security of State Systems, State Data, or the State’s facilities or personnel;
- (ii) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; or
- (iii) breaches any of its material duties or obligations under this Contract. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

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

- (i) cease performance immediately. Contractor must submit all invoices for Services accepted by the State within 30 days of the date of termination. Failure to submit an invoice within that timeframe will constitute a waiver by Contractor for any amounts due to Contractor for Services accepted by the State under this Contract, or
- (ii) continue to perform for a specified period. If it is later determined that Contractor was not in breach of this Contract, the termination will be deemed to have been a termination for public interest, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in **Section 16.2**.

(c) The State will only pay for amounts due to Contractor for Services accepted by the State on or before the date of termination, 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. Further, Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys’ fees, court costs, transition costs, and any costs the State incurs to procure the Services from other sources.

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

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

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

16.3 Transition Responsibilities.

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

- (i) continuing to perform the Services at the established Contract rates;
- (ii) taking all reasonable and necessary measures to transition performance of the work, including all applicable Services to the State or the State's designee;
- (iii) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, and comply with **Section 22.5** regarding the return or destruction of State Data at the conclusion of the Transition Period; and
- (iv) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, the "**Transition Responsibilities**"). The Term of this Contract is automatically extended through the end of the Transition Period.

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

17. Indemnification

17.1 General Indemnification. Contractor 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).

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

- (a) regular updates on proceeding status;
- (b) participate in the defense of the proceeding;
- (c) employ its own counsel; and to

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

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

18. Infringement Remedies.

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

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

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

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

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

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

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

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

- (a) Contractor's compliance with any designs, specifications, or instructions of the State; or
- (b) modification of the Software by the State without the prior knowledge and approval of Contractor.

19. Disclaimer of Damages and Limitation of Liability.

19.1 The State's 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.

19.2 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 PAYABLE UNDER THIS CONTRACT.

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

- (a) a criminal Proceeding;
- (b) a parole or probation Proceeding;
- (c) a Proceeding under the Sarbanes-Oxley Act;
- (d) a civil Proceeding involving:
 - (i) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or
 - (ii) a governmental or public entity's claim or written allegation of fraud; or
- (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.

21. State Data.

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

- (a) User Data; and
- (b) any other data collected, used, Processed, stored, or generated in connection with the Services, including but not limited to:
 - (i) personally identifiable information ("**PII**") collected, used, Processed, stored, or generated as the result of the Services, including, without limitation, any information that identifies an individual, such as an individual's social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother's maiden name, email address, credit card information, or an individual's name in combination with any other of the elements here listed; 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.

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

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

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

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

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

(d) not use, sell, rent, transfer, distribute, 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.

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

21.5 Loss or Compromise of Data. In the event of any act, error or omission, negligence, misconduct, or breach on the part of Contractor that compromises or is suspected to compromise the security, confidentiality, integrity, or availability of State Data or the physical, technical, administrative, or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality, or integrity of State Data, Contractor must, as applicable:

(a) notify the State as soon as practicable but no later than 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.

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

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

22.1 Meaning of Confidential Information. The term "**Confidential Information**" means all information and documentation of a party that:

(a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party;

(b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; or,

(c) should reasonably be recognized as confidential information of the disclosing party.

The term "Confidential Information" does not include any information or documentation that was or is:

(d) in the possession of the State and subject to disclosure under the Michigan Freedom of Information Act (FOIA);

(e) already in the possession of the receiving party without an obligation of confidentiality;

(f) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights;

(g) obtained from a source other than the disclosing party without an obligation of confidentiality; or,

(h) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party).

For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.

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

(a) the subcontractor is a Permitted Subcontractor;

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

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

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

22.4 Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek 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.

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

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

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

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

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

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

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

(a) Free of charge during the Warranty Period.

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

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

26. Training. Contractor will provide, at no additional charge, training on all uses of the Software permitted hereunder in accordance with the times, locations and other terms set forth in a Statement of Work. Upon the State's request, Contractor will timely provide training for additional Authorized Users or other additional training on all uses of the Software for which the State requests such training, at such reasonable times and locations and pursuant to such rates and other terms as are set forth in the Pricing Schedule.

27. Maintenance Releases; New Versions

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

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

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

28. Source Code Escrow

28.1 Escrow Contract. The parties may enter into a separate intellectual property escrow agreement. Such escrow agreement will govern all aspects of Source Code escrow and release. The cost of the escrow will be the sole responsibility of Contractor.

28.2 Deposit. Within thirty (30) business days of the Effective Date, Contractor will deposit with the escrow agent, pursuant to the procedures of the escrow agreement, the Source Code for the Software, as well as the Documentation and names and contact information for each author or other creator of the Software. Promptly after release of any update, upgrade, patch, bug fix, enhancement, new version, or other revision to the Software, Contractor will deposit updated Source Code, documentation, names, and contact information with the escrow agent.

28.3 Verification. At State's request and expense, the escrow agent may at any time verify the Deposit Material, including without limitation by compiling Source Code, comparing it to the Software, and reviewing the completeness and accuracy of any and all material. In the event that the Deposit Material does not conform to the requirements of **Section 28.2** above:

(a) Contractor will promptly deposit conforming Deposit Material; and

(b) Contractor will pay the escrow agent for subsequent verification of the new Deposit Material. Any breach of the provisions of this **Section 28.3** will constitute material breach of this Contract, and no further payments will be due from the State until such breach is cured, in addition to other remedies the State may have.

28.4 Deposit Material License. Contractor hereby grants the State a license to use, reproduce, and create derivative works from the Deposit Material, provided the State may not distribute or sublicense the Deposit Material or make any use of it whatsoever except for such internal use as is necessary to maintain and support the Software. Copies of the Deposit Material created or transferred pursuant to this Contract are licensed, not sold, and the State receives no title to or ownership of any copy or of the Deposit Material itself. The Deposit Material constitutes Confidential Information of Contractor pursuant to **Section 22** (Non-disclosure of Confidential Information) of this Contract (provided no provision of **Section 22.4** calling for return of Confidential Information before termination of this Contract will apply to the Deposit Material).

29. Contractor Representations and Warranties.

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

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

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

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

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

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

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

(a) The prices proposed by Contractor were arrived at independently, without consultation, communication, or agreement with any other Bidder for the purpose of restricting competition; the prices quoted were

not knowingly disclosed by Contractor to any other Bidder to the Request for Proposal; and no attempt was made by Contractor to induce any other Person to submit or not submit a proposal for the purpose of restricting competition;

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

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

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

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

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

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

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

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

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

(i) conflict with or violate any applicable law;

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

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

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

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

(ii) fail to comply with any applicable law;

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

(i) Harmful Code; or

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

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

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

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

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

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

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

(n) If Contractor Hosted:

- (i) Contractor will not advertise through the Hosted Services (whether with adware, banners, buttons or other forms of online advertising) or link to external web sites that are not approved in writing by the State;
- (ii) the Software and Services will in all material respects conform to and perform in accordance with the Specifications and all requirements of this Contract, including the Availability and Availability Requirement provisions set forth in the Service Level Agreement;
- (iii) all Specifications are, and will be continually updated and maintained so that they continue to be, current, complete and accurate and so that they do and will continue to fully describe the Hosted Services in all material respects such that at no time during the Term or any additional periods during which Contractor does or is required to perform the Services will the Hosted Services have any material undocumented feature;

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

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

30. Offers of Employment. During the first twelve (12) months of the Contract, should Contractor hire an employee of the State who has substantially worked on any project covered by this Contract without prior written consent of the

State, the Contractor will be billed for fifty percent (50%) of the employee's annual salary in effect at the time of separation.

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

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

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

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

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

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

37. Force Majeure

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

37.2 State Performance; Termination. In the event of a Force Majeure Event affecting Contractor's performance under the Contract, the State may suspend its performance hereunder until such time as Contractor resumes performance. The State may terminate the Contract by written notice to Contractor if a Force Majeure Event affecting Contractor's performance hereunder continues substantially uninterrupted for a period of five (5) Business

Days or more. Unless the State terminates the Contract pursuant to the preceding sentence, any date specifically designated for Contractor's performance under the Contract will automatically be extended for a period up to the duration of the Force Majeure Event.

37.3 Exclusions; Non-suspended Obligations. Notwithstanding the foregoing or any other provisions of the Contract or this Schedule:

- (a) in no event will any of the following be considered a Force Majeure Event:
 - (i) shutdowns, disruptions or malfunctions of Hosted Services or any of Contractor's telecommunication or internet services other than as a result of general and widespread internet or telecommunications failures that are not limited to the Hosted Services; or
 - (ii) the delay or failure of any Contractor Personnel to perform any obligation of Contractor hereunder unless such delay or failure to perform is itself by reason of a Force Majeure Event.

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

38. Dispute Resolution. The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 business days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance. Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' senior executive and either concludes that resolution is unlikely or fails to respond within fifteen (15) business days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This Section does not limit the State's right to terminate the Contract.

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

40. Severability. If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.

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

42. Survival. The rights, obligations and conditions set forth in this **Section 42** and **Section 1** (Definitions), **Section 16.3** (Transition Responsibilities), **Section 17** (Indemnification), **Section 19** (Disclaimer of Damages and Limitations of Liability), **Section 21** (State Data), **Section 22** (Non-Disclosure of Confidential information), **Section 29** (Contractor Representations and Warranties), **Section 53** (Effect of Contractor Bankruptcy) and **Schedule C** Insurance, and any right, obligation or condition that, by its express terms or nature and context is intended to survive the termination or expiration of this Contract, survives any such termination or expiration.

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

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

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

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

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

44. Extended Purchasing Program. This contract is extended to MiDEAL members. MiDEAL members include local units of government, school districts, universities, community colleges, and nonprofit hospitals. A current list of MiDEAL members is available at www.michigan.gov/mideal.

44.1 Upon written agreement between the State and Contractor, this contract may also be extended to:

- (a) other states (including governmental subdivisions and authorized entities); and
- (b) State of Michigan employees.

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

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

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

46. HIPAA Compliance. The State and Contractor must comply with all obligations under HIPAA and its accompanying regulations, including but not limited to entering into a business associate agreement, if reasonably necessary to keep the State and Contractor in compliance with HIPAA.

47. Accessibility Requirements.

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

- (a) maintain compliance with WCAG 2.0 Level AA and meet or exceed the level of conformance provided in its written materials, including the level of conformance provided in each PAT;
- (b) comply with plans and timelines approved by the State to achieve conformance in the event of any deficiencies;
- (c) ensure that no Maintenance Release, New Version, update or patch, when properly installed in accordance with this Contract, will have any adverse effect on the conformance of Contractor’s Software to WCAG 2.0 Level AA;
- (d) promptly respond to and resolve any complaint the State receives regarding accessibility of Contractor’s Software;

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

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

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

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

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

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

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

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

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

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

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

the entry by a court of competent jurisdiction of an order granting equitable relief, in either case, consistent with the terms of this Section.

53. Effect of Contractor Bankruptcy. All rights and licenses granted by Contractor under this Contract are and will be deemed to be rights and licenses to “intellectual property,” and all Software and Deliverables are and will be deemed to be “embodiments” of “intellectual property,” for purposes of, and as such terms are used in and interpreted under, Section 365(n) of the United States Bankruptcy Code (the “Code”). If Contractor or its estate becomes subject to any bankruptcy or similar proceeding, the State retains and has the right to fully exercise all rights, licenses, elections, and protections under this Contract, the Code and all other applicable bankruptcy, insolvency, and similar laws with respect to all Software and other Deliverables. Without limiting the generality of the foregoing, Contractor acknowledges and agrees that, if Contractor or its estate will become subject to any bankruptcy or similar proceeding:

(a) all rights and licenses granted to the State under this Contract will continue subject to the terms and conditions of this Contract, and will not be affected, even by Contractor’s rejection of this Contract; and

(b) the State will be entitled to a complete duplicate of (or complete access to, as appropriate) all such intellectual property and embodiments of intellectual property comprising or relating to any Software or other Deliverables, and the same, if not already in the State’s possession, will be promptly delivered to the State, unless Contractor elects to and does in fact continue to perform all of its obligations under this Contract.

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

Schedule A	Statement of Work
Schedule B	Pricing
Schedule C	Insurance
Schedule D	Service Level Agreement
Schedule E	Data Security Requirements
Schedule F	Disaster Recovery Plan (if Contractor Hosted)
Schedule G	Transition Plan
Schedule H	Federal Provisions Addendum
Schedule I	VPAT Matrix
Schedule J	LMS Courses
Schedule K	

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

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

SCHEDULE A
STATEMENT OF WORK

1. DEFINITIONS

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

Term	Definition
CEU	Certified Education Unit
CRC	Certified Rehabilitation Counselor
DTMB	Department of Technology Management and Budget
LEO	Department of Labor and Economic Opportunity
LMS	Learning Management System
MRS	Michigan Rehabilitative Services
NDA	Non-Disclosure Agreement
PAT	Product Accessibility Template
PSP	Policies, Standards, and Procedures
SSO	Single Sign-On
WIOA	Workforce Innovation and Opportunity Act

2. BACKGROUND

The mission of Michigan Rehabilitation Services (MRS) is: "Develop customized workforce solutions for businesses and individuals with disabilities." Running and maintaining an effective Learning Management System is vital in achieving the bureau's mission. A Learning Management System allows MRS to provide vital job and professional training for internal staff. The system also allows for tracking of certifications, education and training history, and compliance with 34 CFR 361.18 and the Federal Workforce Innovation Opportunity Act (WIOA).

PURPOSE

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

3. IT ENVIRONMENT RESPONSIBILITIES

YesLMS is a cloud-based LMS provided on a software as a service (SaaS) basis. YesLMS is hosted on a Microsoft Azure cloud-computing platform that is administered and paid for by Contractor.

Contractor will meet all State PSPs, both public and non-public, applicable to this Contract.

Acceptable Use Policy: YesLMS will not interact with any security elements of the State IT environment. This is because YesLMS is hosted in a cloud-based platform and it is accessed by individual users through a web browser.

Protection of State's Information: YesLMS is hosted in Microsoft Azure and is FedRAMP compliant.

Security Accreditation Process: When requested by the State, Contractor will assist with a system security plan (SSP).

Unauthorized Access: YesLMS is hosted on a Microsoft Azure cloud-computing platform administered by Contractor. YesLMS will not access any State IT resources under any circumstances.

Security Audits: When requested by the State, Contractor will provide a copy of Microsoft Azure FedRAMP System Security Plan, and will also implement any required safeguards as identified by the State or by any audit of Contractor's data privacy and information security program.

Application Scanning: Contractor will scan all applications, and will analyze, remediate and validate all vulnerabilities identified by the scans as required by the State Secure Web Application and other applicable PSPs.

Infrastructure Scanning: Contractor will ensure the infrastructure and applications are scanned using an approved scanning tool (Qualys, Tenable, or other PCI Approved Vulnerability Scanning Tool) at least monthly and provide the scan's assessments to the State in a format that is specified by the State and used to track the remediation.

For a Contractor Hosted Software Solution:

Definitions:

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

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

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

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

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

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

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

Component Matrix	Identify contract components with contractor or subcontractor name(s), if applicable
Facilities	YesLMS is entirely cloud based. No physical buildings are needed to house the infrastructure.
Infrastructure	YesLMS is entirely cloud based. Our infrastructure is built on the Microsoft Azure cloud computing platform. YesLMS uses ZenDesk application for tech support communications.
Platform	Microsoft.Net Core 3.1 SDK, NodeJS 15.5.1
Application	C# 8; .Net Core 3.1+ Framework; Typescript 3.8.0; Angular 9
Storage	Microsoft Azure SQL 12.0.200+; Azure Blob Containers
Backup	Backups in SQL Azure are already configured by default. These backups allow the restoration of the database at a certain time within the retention period that is configured in 14 days (Point in Time Restore) and with Long-term Retention configured for weekly, monthly and yearly. And Azure Blob containers have storage with geographic redundancy (GRS) configured.
Development	Subcontractor: Guiddle ME

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

Guiddle, a nearshore company in Brazil, provides platform developers, platforms maintenance and support.

Guiddle ME (ME - Similar to LLC in the USA)
 Address: Rua Capitão João Antônio 4-66
 City: Bauru
 State: São Paulo
 Zip code: 17015-410

Guiddle provides 4 full-time developers, and a part-time UX Designer to Contractor. Contractor has worked very closely with Guiddle since 2015. Guiddle developers who began with YesLMS development in 2016 are still working on YesLMS development today.

All supervision and security oversight are performed by Contractor employees in the U.S.A.

4. ADA COMPLIANCE

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

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

Each PAT must state exactly how the product meets the specifications. All "Not Applicable" (N/A) responses must be fully explained. Contractor must address each standard individually and with specificity; and clarify whether conformance is achieved throughout the entire product (for example – user functionality, administrator functionality,

and reporting), or only in limited areas. A description of the evaluation methods used to support WCAG 2.0 Level AA conformance claims, including, if applicable, any third-party testing, must be provided. For each product that does not fully conform to WCAG 2.0 Level AA, Contractor must provide detailed information regarding the plan to achieve conformance, including timelines.

YesLMS was built to exceed all accessibility standards, for a learning management system, including WCAG 2.0 Level AA. YesLMS complies with the Americans with Disabilities Act of 1990 (ADA) and has adopted standards and procedures regarding accessibility requirements for websites and software applications. See Schedule I – VPAT. YesLMS was originally vetted and approved by the National Helen Keller Center and it exceeds Web Content Accessibility (WCAG 2.0), 504 and 508 guidelines.

5. USER TYPE AND CAPACITY

Type of User	Access Type	Number of Users	Number of Concurrent Users
State Employee	Read and Write	700	300
State Administrators	Read, Write and Administrative	10	10

Contractor Solution must meet the expected number of concurrent Users.

YesLMS is stored in and delivered through the Microsoft Azure cloud computing platform. Contractor uses the Microsoft Azure B2 standard plan which allows up to 1000 concurrent users. We plan for our user base to continue to grow. As the total number of concurrent users for all Contractor’s clients increases, Contractor will scale up by purchasing a different Microsoft Azure plan that has greater processing capacity, memory, and number of allowable concurrent users. In addition, Contractor can scale horizontally, increasing the number of instances of Contractor’s core YesLMS application within Azure, reaching up to 3 instances of the same plan. Contractor’s database for client information (courses, attached documents, user lists) is currently limited to 20 DTUs and 5 GB of memory. Contractor plans to increase this soon to 3000 DTUs and 256 GB. As Contractor’s system continues to grow according to plan, Contractor will eventually upgrade to a larger Microsoft Azure plan that permits 4000 DTUs and 1 TB of memory.

Latency response time has been tested using Azure in January 2020 by Contractor with latency found to be 2.5 seconds.

The only connectivity required for the YesLMS platform is an Internet connection and any of the following browsers: Google Chrome 76+, Microsoft Edge 79+, Firefox 66+, and Safari 10.1.2+. The stated latency response time can be achieved if the State’s Internet connection is 10 Mbps or higher.

6. ACCESS CONTROL AND AUTHENTICATION

The Contractor’s solution must integrate with the State’s IT Identity and Access Management (IAM) environment as described in the State of Michigan Digital Strategy (https://www.michigan.gov/dtmb/0,5552,7-358-82547_56345_56351_69611-336646--,00.html), which consist of:

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

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

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

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

YesLMS supports Oauth authentication. Contractor will work with DTMB to integrate YesLMS with SOM MILogin solution. YesLMS is Software as a service (SaaS) hosted in Microsoft Azure and is accessed through a web browser.

7. DATA RETENTION AND REMOVAL

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

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

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

PiTR (Point in Time Restore) is configured for 14 days. Contractor can restore a version of the database back to any date and time within the prior 14 days. In addition, Contractor has configured weekly, monthly and yearly LTR (Long-term Retention) backups, which store data according to the creation date. Retention periods for LTR backups are: 4 weeks for weekly backups, 6 years for monthly backups, and 6 years for annual backups.

The database has automatic failover, with the databases replicated geographically. In case of failure in the main instance, the second instance assumes the main role. This exchange occurs automatically without impacting the system.

8. END USER OPERATING ENVIRONMENT

The SOM IT environment includes X86 VMware, IBM Power VM, MS Azure/Hyper-V and Oracle VM, with supporting platforms, enterprise storage, monitoring, and management.

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

- Over 2% of site traffic, measured using Sessions or Visitors (or)
- The current browser identified and approved as the State of Michigan standard

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

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

YesLMS is a Software as a service (SaaS) hosted in Microsoft Azure. State users can access the system from any device connected to the Internet that has a standards-compliant browser installed. The optimal technical environment for accessing YesLMS is through any of the following web browsers: Google Chrome 76+, Microsoft Edge 79+, Firefox 66+, and Safari 10.1.2+. Because Microsoft will stop supporting Internet Explorer in a few months, Contractor has discontinued support for YesLMS on Internet Explorer. As a result, YesLMS will NOT run properly on

Internet Explorer. YesLMS recommends that state users have an Internet speed of at least 10Mbps. Any future changes to the user environment will not affect access to YesLMS.

Planned software changes and updates will be announced in writing via email, 5 days prior to being implemented across the system. The Software Change Notice is sent to the primary administrator for each client system. Contractor revises their User Manual whenever a .X or higher software revision is released. For example, when upgrading from version 3.0 to 3.1 Contractor will issue a revision to the User Manual.

Contractor does not announce revisions for minor bug fixes and they are not noted in the User Manual.

A software version control number is displayed in a footer which is visible on each page within YesLMS.

Contractor will maintain an active relationship with the State regarding requests for upgrades, maintenance and changes. Contractor actively solicits feedback and change requests during our onboarding and training process which is led by a technical services representative which is assigned to the State. Contractor logs all customer change requests in their project management software. As Contractor begins to implement requested changes into the platform, Contractor will notify the State keep the Program Manager informed as to the expected release date. On rare occasions when the Contractor decides not to implement a State-requested change, Contractor will inform the State of their reasoning and educate the State on workarounds that might be available.

YesLMS does not require any plug-ins. YesLMS relies only on functionality that is built into all browsers on Contractor's approved list.

9. SOFTWARE

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

Look and Feel Standards

All software items provided by the Contractor must adhere to the State of Michigan Application/Site standards which can be found at <https://www.michigan.gov/standards>.

YesLMS will adhere to the look and feel Standards outlined by Michigan guidelines.

Mobile Responsiveness

If the software will be used on a mobile device as define in Schedule A – Table 1, Business Specification Worksheet, the Software must utilize responsive design practices to ensure the application is accessible via a mobile device.

YesLMS is licensed as a subscription-based software as a service (SaaS).

YesLMS is compatible with any mobile device that can access the Internet and that uses an Android or iOS operating system.

All YesLMS features can be accessed from mobile devices.

Features include:

- Register as a new user with YesLMS
- Register for courses
- Log in
- Take courses
- Take quizzes
- Assignments
- Discussion Forum
- Manage Users
- Manage Courses
- Add Users
- Create Groups
- Send/Receive notifications
- Contact Support
- System settings
- Generate reports
- Access calendar

Description

YesLMS software as a service (SaaS), version 2.0, in conjunction with a library of (currently) 63 courses on Vocational Rehabilitation topics. See **Schedule J - YesLMS COURSES**.

YesLMS is a cloud-based Learning Management System (LMS) that guarantees barrier-free instruction for students and professionals. Unlike many learning management systems, YesLMS integrates inclusive design into every aspect of the platform. YesLMS was created with inclusive design in mind every step of the way — making it possible to deliver equal educational opportunities to every learner. YesLMS allows an organization to author and administer courses to their constituents.

Who Uses This Software?

YesLMS delivers online content in both public and private environments. We cater to corporate HR, healthcare, continuing education providers, professional organizations, non-profits, training departments, online schools and educational institutions.

Inclusive Design

The YesLMS platform was built with FULL access as a foundation. It's accessible to all users including those with disabilities. Working with the National Helen Keller Center, we have developed the world's most inclusive platform to meet the needs of the most diverse learner base.

YesLMS was designed from the ground up to meet critical accessibility needs while consistently outperforming other platforms.

Services

The powerful design and administrative features of the YesLMS platform are available for use directly by the State. The State can take charge of the entire design, implementation and administrative process. User support is offered at no additional charge.

If the State wants to take a less hands-on approach, Contractor has additional levels of support that can be purchased.

Customizable

Contractor's platform is highly customizable. Courses can include quizzes, tests, forums and more. Videos, graphics and recorded webinars can be embedded into courses. An extensive selection of reports and administrative functions are built in, allowing the State to easily monitor the progress of individual learners as well as the entire team.

Built-in features include:

Responsive, mobile-friendly platform: YesLMS works across any platform, including mobile devices. Learners get the same learning experience no matter what device is used.

24/7 fast, friendly support

Cloud-based technology: No need to worry about storage or IT overhead costs. Plus, get immediate updates as soon as they're released.

Fully customizable and scalable: YesLMS is ready to handle your training and learning needs. Pay only for what you need, when you need it. If the needs of MRS grow during the period of this contract, the scope of this contract can be amended to allow for a larger number of users. Although this contract is currently written for 700 users, YesLMS can allow the number of users to increase to 800 without the need to amend the scope or cost of this contract.

Intuitive, easy-to-use design: YesLMS was developed with universal design principles in mind every step of the way, making it more purposeful, more attractive, more efficient, and easier to use.

Communication and collaboration tools: Built-in web conferencing, webinar hosting, notifications, discussion forums, assignments, and calendar.

Robust reporting and user management capabilities: YesLMS provides secure, fine-grained access control, and the data needed to make meaningful learning management decisions.

100% accessible: YesLMS is the only LMS platform that is 100% fully accessible to learners with varying abilities and multiple learning styles. Developed by educators, YesLMS incorporates universal design for learning into its built-in course authoring tools.

Multilingual: YesLMS is available in English, Spanish, French, and Brazilian-Portuguese.

10. INTEGRATION

No integration services are required at this time.

11. MIGRATION

No data migration services are required at this time.

12. TRAINING SERVICES

The Contractor must provide administration and end-user training for implementation, go-live support, and transition to customer self-sufficiency.

YesLMS is a robust and easy to use learning management system. There are four role designations within YesLMS; Super Administrator, Administrator, Instructors, and Trainees. The training suggested for each role to become proficient in using YesLMS is below.

Super administrators, administrators, and instructor training recommendation (10 administrators identified by MRS):

- To be scheduled with MSR administrators at their earliest convenience after the Contract has been awarded.
 - 1-2 hour virtual training with the YesLMS project manager and YesLMS onboarding specialist for an extended demo. In this initial meeting, MRS staff will be introduced to the YesLMS dedicated specialist, guided through the platform and encouraged to ask questions as they go.
 - Follow-up virtual meeting recommended for 14-30 days after initial meeting, to address the more complex questions this group may have after working within the system.

Meeting with Super Admins:

- 1-2 hour virtual meeting, after the initial meeting, to check-in and address the more complex questions super administrators may have after working within the system. In addition, super administrators will receive guidance specific to their role including assigning administrator roles and developing reports.

Trainees:

- YesLMS is very easy for trainees to use. End users typically do not need to be trained. However, if MRS would like to offer trainees a demo on using the platform, YesLMS will provide one 1-hour virtual session for trainees.

These sessions can be recorded and used as resources or guides for future hires, or to provide information to MRS employees who are not able to attend, or would like to review the original session.

Contractor will provide:

- User manual applicable to all system roles
- A copy of the user manual with clearly written instructions and documentation to enable State administrators and end-users to successfully operate the Solution.
- Pre-recorded videos and online content created by our YesLMS specialists on how to use the platform.

13. TRANSITION RESPONSIBILITIES

Transition In:

YesLMS project manager will:

- Consult with MRS administrators to assure that they have the skills to migrate any current content that MRS has to YesLMS

- These consultations will occur virtually
- Additional consultations are offered at no additional cost to MRS
- YesLMS project manager will assist MRS administrators in the transfer of material in as many sessions as needed.

Transition Out:

At the end of this term, if MRS chooses to Transition from away from YesLMS, Contractor will:

- Assist MRS with migrating MRS content to a new platform
- Reports from YesLMS (including those involving YesLMS course content) will be downloaded into a CSV or Excel file
- Courses offered through YesLMS (VR courses mentioned in this RFP) will not be available for transfer to the new system

14. DOCUMENTATION

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

Contractor must develop and submit for State approval complete, accurate, and timely Solution documentation to support all users, and will update any discrepancies, or errors through the life of the contract.

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

Contractor will provide a user friendly, accessible and easy to use Platform. In addition to a dedicated onboarding specialist provided by Contractor, 24-hour tech support, and 12/7 live support, YesLMS will provide:

- User manual applicable to all system roles
- Pre-recorded videos and online content created by our YesLMS specialists on how to use the platform.
- YesLMS online class, including videos, sharing tips for using the platform.
- Recorded onboarding videos
- All materials will remain current and updated.

15. ADDITIONAL PRODUCTS AND SERVICES

Contractor provides the following:

- Dedicated onboard specialist to assist MRS with platform implementation and post go live assistance. This dedicated YesLMS specialist will be available to MRS administrators for additional virtual group meetings, one-to-one virtual assistance, answers via email and phone calls. MRS will be able to contact a dedicated specialist throughout the contract term.
- 24/7 tech support solutions via Zendesk for all users of YesLMS, including trainees.
- Live tech support from 8am - 8pm EST, 7 days a week for all users of YesLMS, including trainees.

16. CONTRACTOR PERSONNEL

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

<p>Contractor Name: Linda Hedenblad Address: 2401 Willard Ave City, ST, ZIP: Madison, WI 53704 Phone: 608-217-6771 Email: Linda@yeslms.com</p>

17. CONTRACTOR KEY PERSONNEL

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

Contractor
Name: Linda Hedenblad Address: 2401 Willard Ave City, ST, ZIP: Madison, WI 53704 Phone: 608-217-6771 Email: Linda@yeslms.com

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

Contractor
Name: Sean Kearney Address: 172 Gladstone Dr City, ST, ZIP: Bassett VA, 24055 Phone: 303-882-4620 Email: Sean@yeslms.com

18. CONTRACTOR PERSONNEL REQUIREMENTS

Background Checks. Contractor must present certifications evidencing satisfactory Michigan State Police Background checks, ICHAT, and drug tests for all staff identified for assignment to this project.

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

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

Offshore Resources.

Contractor works with Guiddle ME, a nearshore company in Brazil, to provide platform developers, platform maintenance and support.

Guiddle ME (ME - Similar to LLC in the USA)
 Address: Rua Capitão João Antônio 4-66
 City: Bauru
 State: São Paulo
 Zip code: 17015-410

Guiddle provides 4 full-time developers, and a part-time UX Designer to Contractor. Contractor has worked very closely with Guiddle since 2015. Guiddle developers who began with YesLMS development in 2016 are still working on YesLMS development today. Guiddle CIO has worked on a US Department of Education Grants, Rehabilitation Services Administration Grant for over a decade.

All supervision and security oversight are performed by Contract employee in the U.S.A.

19. STATE RESOURCES/RESPONSIBILITIES

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

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

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

Implementation Project Manager. The DTMB Project Manager

DTMB Project Manager
Name: Ryan Lonsbury
Phone: 517-284-9802
Email: lonsburyr@michigan.gov

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

DTMB Program Manager
Name: Tina Mitchell
Phone: 517-930-4993
Email: mitchellt7@michigan.gov

Agency Program Manager
Name: Tammi Williams
Phone: 517-230-6505
Email: williamst13@michigan.gov

20. MEETINGS

At start of the engagement, the Contractor Project Manager must facilitate a project kick off meeting with the support from the State's Project Manager and the identified State resources to review the approach to accomplishing the project, schedule tasks and identify related timing, and identify any risks or issues related to the planned approach. From project kick-off until final acceptance and go-live, Contractor Project Manager must facilitate weekly meetings (or more if determined necessary by the parties) to provide updates on implementation progress. Following go-live, Contractor must facilitate monthly meetings (or more or less if determined necessary by the parties) to ensure ongoing support success.

Virtual Project Kick Off and Implementation Meeting - Contractor Project Manager will attend a virtual meeting with State's Project manager and other MRS appointed staff. This meeting to be scheduled as soon as possible after Contract is awarded.

Project Implementation: Contractor has completed most phases of this project. Courses are ready to be loaded to YesLMS/MRS site. Once RFP has been approved, YesLMS and MRS can move quickly to the implementation phase.

Weekly Meetings - Contractor Project Manager will meet with DTMB/MRS weekly, or more often if MRS deems it necessary, to complete the implementation process. Since Contractor is ready to implement the project, ongoing meetings will not be extensive, leaving MRS staff to pursue their agency mission.

- In addition, a dedicated Contractor Onboarding Specialist will be assigned to this project. The specialist will be available to meet directly with MRS staff to train them on how to use the site. A virtual meeting followed by additional meetings as needed are recommended. The Contractor onboarding specialist will also be available via email or phone to assure ease of implementation.

Post Go-Live – Contractor Project Manager will meet with MRS weekly, monthly or as determined by the needs of MRS.

- In addition, the dedicated onboarding specialist will continue to be available throughout the life of the project to directly assist with questions or issues that may arise with use of YesLMS software.

Contractor project manager will work closely with DTMB/MRS administrators to determine the most effective method for implementing this project. Contractor will work within the timelines provided, or more quickly, guided by the direction of MRS, and their overall project goals.

21. PROJECT CONTROL & REPORTS

Once the Project Kick-Off meeting has occurred, the Contractor Project Manager will monitor project implementation progress and report on a weekly basis to the State's Project Manager the following:

- Progress to complete milestones, comparing forecasted completion dates to planned and actual completion dates
- Accomplishments during the reporting period, what was worked on and what was completed during the current reporting period
- Indicate the number of hours expended during the past week, and the cumulative total to date for the project. Also, state whether the remaining hours are sufficient to complete the project
- Tasks planned for the next reporting period
- Identify any existing issues which are impacting the project and the steps being taken to address those issues
- Identify any new risks and describe progress in mitigating high impact/high probability risks previously identified
- Indicate the amount of funds expended during the current reporting period, and the cumulative total to date for the project.

All Contractors must submit and enter weekly timesheets into the State of Michigan's Project Portfolio Management tool, Clarity PPM, for approval and reporting. The weekly Clarity PPM timesheet will contain hours worked for assigned project tasks.

Reporting: Contractor will meet all reporting expectations.

Project Implementation: Contractor will provide "out-of-the-box" services (including 63 VR courses), as well as customized services for MRS. Contractor will assist MRS directly in the implementation phase. MRS platform administrator training to begin immediately or at MRS's earliest convenience.

Go-Live Ongoing Support - Contractor will provide a dedicated onboarding specialist who will act as support liaison for MRS administrators. Administrators will have a single contact that they can access via email or phone who will answer questions and assist with problem solving. Administrators and MRS staff will have 24 access to YesLMS tech support. Live tech support is provided from 8am - 8pm est.

Transition Planning - Contractor course designers will work with MRS staff to assure proper uploading of MRS training modules. Contractor will assist in advising and loading previously created content by MRS. User guide and additional training will be provided to assure a smooth transition.

22. PROJECT MANAGEMENT

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

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

SUITE Documentation

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

SUITE's primary goal is the delivery of on-time, on-budget, quality systems that meet customer expectations. SUITE is based on industry best practices, including those identified in the Project Management Institute's PMBoK and the Capability Maturity Model Integration for Development. It was designed and implemented to standardize methodologies, processes, procedures, training, and tools for project management and systems development lifecycle

management. It offers guidance for efficient, effective improvement across multiple process disciplines in the organization, improvements to best practices incorporated from earlier models, and a common, integrated vision of improvement for all project and system related elements.

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

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

Milestones/Deliverables for Implementation

The State's milestone schedule and associated deliverables are set forth below.

Milestone Event	Deliverables	Party/Dept Responsible	Schedule	Additional
Project Planning	Project Kickoff	YesLMS project manager/MRS representatives	Contract Execution + 10 calendar days	<i>Meeting with an MRS representative to clarify goals, projections, expectations and timeline.</i>
YesLMS/MRS site personalization	YesLMS will upload MRS logo, colors, and create URL	YesLMS project manager/MRS representative/MRS IT representative	Contract Execution + 10 calendar days	<i>YesLMS can move quickly through this phase and should beat this timeline.</i>
YesLMS Courses	Upload 63 courses to MRS/YesLMS site	YesLMS project manager/YesLMS IT	Execution + 20 calendar days	<i>Courses are ready to be loaded to YesLMS/MRS site. Once RFP has been approved, YesLMS and MRS can move quickly to the implementation phase and well within these timelines.</i>
Testing and Acceptance	MRS testing of site, YesLMS modifications to meet RFP requirement of necessary	YesLMS project manager/YesLMS IT/MRS IT/MRS representative	Execution + 30 calendar days	<i>YesLMS will work with MRS to test the site, courses, and access to MRS employees to assure proper functioning and MRS satisfaction</i>
Project Implementation	Virtual Meeting, training documentation, training recording	YesLMS project manager/YesLMS onboarding specialist/MRS LMS administrators	Execution + 45 calendar days	<i>YesLMS will work with schedule that meets MRS availability and timelines. YesLMS can meet this</i>

				<i>milestone sooner if MRS is ready.</i>
(Continued)	Virtual Meeting phase two	YesLMS project manager/YesLMS onboarding specialist/MRS LMS administrators	Execution + 70 calendar days	<i>YesLMS will work with schedule that meets MRS availability and timelines. YesLMS can meet this milestone sooner if MRS is ready.</i>
Trainee Education – <i>if desired by MRS</i>	Virtual workshop for trainees	YesLMS project manager/YesLMS onboarding specialist/MRS trainees	Execution+90 calendar days	<i>YesLMS can move quickly through this phase and should beat these timelines.</i>
Post-Production Warranty	Included in the cost of Solution	YesLMS project manager	Production + 90 calendar days	<i>YesLMS can move quickly through this phase and should beat these timelines.</i>
Support Services	Handbook, online instruction, video, live support, system updates	YesLMS project manager/YesLMS IT/YesLMS Tech support/YesLMS onboarding specialist	Ongoing	<i>YesLMS will assign a designated specialist to be on-call for platform assistance. In addition, YesLMS provides 24/7 tech support and 12/7 live tech support. System updates will occur with no downtime to customers.</i>
Project Planning Additional	Virtual Meetings	YesLMS project manager/MRS representatives	<i>As needed</i>	<i>Weekly or monthly meetings (as needed) to assure an efficient, effective and timely delivery of this project. TBD by MRS.</i>

YesLMS will complete deliverables on-time or ahead of the schedule above.

23. ADDITIONAL INFORMATION

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

SCHEDULE A
TABLE 1 - Business Specification Worksheet

Instructions for Completing the Business Specifications Worksheet

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

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

Column A: Business Specification number.

NOTE:

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

Column B: Business Specification description.

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

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

NOTE: Configuration is referred to as a change to the Solution that must be completed by the awarded Contractor prior to Go-Live but allows an IT or non-IT end user to maintain or modify thereafter (i.e. no source code or structural data model changes occurring).

Customization is referred to a modification to the Solution's underlying source code, which can be completed as part of the initial implementation. All configuration changes or customization modifications made during the term of the awarded contract must be forward-compatible with future releases and be fully supported by the awarded Contractor without additional costs.

Contractor shall understand that customizations (i.e. changes made to the underlying source code of the Solution) may not be considered and may impact the evaluation of the Contractor's proposal.

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

A	B	C					D
Business Specification Number	Business Specification	Current Capability	Requires Configuration	Requires Customization	Future Enhancement	Not Available	Contractor to explain how they will deliver the business Specification. Explain the details of any configuration/customization and the impacted risk that may be caused if configured or customized to meet the business specification.
MANDATORY MINIMUM							
1.0	The system must provide pre-existing and extensive Vocational Rehabilitation (VR) Online Training Curriculum.	Y					The YesLMS system for MRS will include the existing library of 63 courses from the VR Development Group. These courses are specific to Vocational Rehabilitation and they cover a wide range of VR topics, including but not limited to: History of VR, Intro to VR series, Critical Thinking, Medical Aspects of Disability, 10-hours of Ethics courses, Caseload Management, Autism Spectrum Disorder, Working with Individuals Who Are Deaf-Blind, Traumatic Brain Injury, Resilience, Universal Design for Learning, Trauma Informed Care. As courses are developed, they will be added to the MRS library at no additional cost. For a more detailed description of YesLMS courses see Schedule J – YesLMS Courses
2.0	Universal Design for all online classes and files.	Y					All courses are built using Universal Design. Courses and additional content meet highest accessibility standards.
3.0	The system must support industry standard screen-readers and CART and support ASL interpreters	Y					YesLMS was built from the ground up specifically to be fully compatible with industry standard screen readers. We have worked extensively with the National Helen Keller Institute to ensure that our system meets the highest accessibility standards which exceed WCAG 2.0 level AA or higher. CART and ASL interpreters can interact in real time with online meetings such as Zoom that are embedded in a Live training on YesLMS. CART and ASL integration were demonstrated in Dec. 2020 during a 5-day CSAVR conference with 800 attendees that was hosted on the YesLMS platform.
4.0	The system must comply with the State’s WCAG 2.0 Level AA or higher requirements.	Y					YesLMS is fully compliant with WCAG 2.0 Level AA requirements. This is documented in our VPAT which is attached to this proposal. In the VPAT, dated August 2020, we demonstrate that we meet Levels A, AA and AAA for WCAG 2.0 and 2.1. See Schedule I - VPAT
5.0	The system must provide a calendar and registration system for training and meetings.	Y					<p>A calendar is built into the YesLMS platform. It can be accessed by clicking on Calendar in the main left-side system menu. An MRS administrator can add an event to the calendar and then define attendees either individually or by using the YesLMS group function. The MRS administrator can enter information for any type of event to the calendar, including but not limited to a meeting, training or conference.</p> <p>Registrations for trainings can be handled using any of the following existing methods: 1) bulk creation of new users by an administrator using a CSV formatted spreadsheet of user names after which the entire group of new users can be registered for any number of courses or for all courses; 2) MRS administrator selects from a list of existing users to assign them to a particular course or to a group of courses; 3) administrator creates a new user then selects any number of courses for that user; 4) an individual signs on to YesLMS, then selects a course from the Course Library and places it into their shopping cart to complete registration.</p>

							If MRS wants to use YesLMS to manage registrations to meetings, this can be accomplished by setting up the meeting as a Live training. Registration to the Live training will be handled per the preceding paragraph.
REQUIRED							
6.0	The system must have support for defined roles.	Y					Defined roles in YesLMS are super administrator, administrator, instructor, and trainee . Each role has different privileges and abilities. For each role, the YesLMS system will automatically display all appropriate functions, commands and information. YesLMS has a user guide that applies to all user roles. In addition, YesLMS provides 24-hour tech support through ZenDesk, and live support from 8am-8pm EST 7 days per week. In addition, MRS administrators will be assigned a dedicated YesLMS specialist that they can contact during business hours for one-to-one support.
7.0	The system must allow the ability to add administrative roles with subordinate roles.	Y					YesLMS allows the ability to add administrative roles with subordinate roles. Defined roles in YesLMS are set up in the following descending order of subordination: super administrator, administrator, instructor, and trainee. The higher roles contain all abilities and privileges of subordinate roles. For example, a super administrator can add/edit/delete administrators, instructors, and trainees. An administrator can add/edit/delete instructors and trainees.
8.0	The system must allow administrative roles to monitor performance of subordinate roles.	Y					Administrators and super administrators have extensive tools for monitoring subordinate roles (instructors and trainees). The Reports function in the left-side menu provides a wide range of standard reports. These reports can examine course registrations, certificates issued, time of usage, types of devices used for access, courses accessed, grades and files submitted by trainees, and much more. Detailed and customizable reports can be created by clicking the GO TO REPORTS PAGE button in the middle of the Reports page. Performance of trainees in courses can be monitored using the Gradebook in the main left-side menu. This gives administrators and instructors access to grades for all quizzes, assignments and discussion boards. Within the Gradebook administrators and instructors can view all answers that a trainee has given within quizzes, assignments and discussion boards.
9.0	The system must allow administrative roles to assign training to subordinate roles.	Y					An administrator can assign a trainee to a course using either of two methods. Method 1: upload a CSV formatted spreadsheet containing trainee names, then specify that all trainees in the spreadsheet should be registered for a selected set of classes. This is an easy way of registering hundreds or even thousands of trainees for courses. Method 2: when editing a course, select the Trainees tab, then MANAGE USERS, then choose a username (or several usernames) from the list. This will cause the selected user(s) to be registered for that course.
10.0	The system should allow administrative roles to create performance reports of subordinate roles.	Y					Performance reports for all instructors and trainees can be created by administrators by selecting Reports from the main left-side menu. A summary set of information from premade report types will be displayed automatically. Detailed and customizable reports can be created by clicking the GO TO REPORTS PAGE button in the middle of the Reports page. Reports can be for courses, users and registrations. Extensive filtering functions are available so that reports can be as focused as necessary.
11.0	The system must allow for separate space (class) for individual units ex. Innovation, Business Network Division (BND), Michigan Career and Technical Institute (MCTI) to manage unit data and data for bureau to access.	Y					Multiple options are available for achieving this deliverable and can be customized to meet MRS specifications. Options may include but are not limited to: Using identification tags to allow for easy sorting by different groups; Access Keys can be defined for each course to allow only specifically authorized users to access a course; User groups can be defined that will contain all users from a particular unit. This will allow for easy reporting for each unit and for easy

						registration of users in each unit for specific classes; YesLMS can set up a separate instance of YesLMS using a unique URL for each unit.
12.0	The system must provide notification of upcoming registered trainings and create an outlook appointment in calendar.	Y				Notifications are displayed for all user roles. When logged into YesLMS, notifications are visible in the Notifications section at the lower portion of the left-side menu. Additionally, when a user registers for a class, an announcement email is sent, and it includes a link to an Outlook calendar event.
13.0	The system must be able to track who is registered and who attended training for both training within Learning Management System and external to the Learning Management System.	Y				Registrations for all classes, both On Demand (asynchronous) and Live (synchronous) are tracked at all times. Registration status and course completion can be easily viewed by an administrator or instructor by selecting a specific course, then navigating to Edit Course, Trainees tab. This will display a list of all registered users and it will indicate whether or not each user has completed the training and whether or not they have earned a certificate. If an in-person or webinar class is to be held external to YesLMS, a Live course should be created in YesLMS. The Live course will contain meeting time, date and location, along with any documentation and supplemental educational content. Registered trainees must interact with the course (either On Demand or Live) within YesLMS. Reports are available to administrators to track trainee participation in all courses.
14.0	The system must be able to duplicate course and material from prior training when creating a new event in the calendar for registration.	Y				An existing course can be easily duplicated, which will result in the creation of a new course. When a course is duplicated all related content and inline documents are copied as well.
15.0	The system must provide asynchronous self-paced training.	Y				YesLMS is nationally known for its dynamic self-paced (asynchronous) courses. Asynchronous, self-paced courses are termed "On Demand" courses in YesLMS. On Demand (asynchronous) courses can be taken at any time and at any pace by any registered trainee.
16.0	The system must provide instructor led training.	Y				Instructor led trainings are termed "Live" in YesLMS. A Live (instructor led) course is held at a specific time and the instructor either appears at a predetermined physical location or via an online meeting application such as Zoom.
17.0	The system must provide a synchronous virtual classroom.	Y				Synchronous virtual classrooms are created by creating a Live course. The live course contains any supporting educational content, documents, quizzes, or surveys. An online meeting (such as Zoom) link can be embedded in a lesson.
18.0	The system must provide the ability to accommodate discussion boards and student upload of assignments.	Y				Discussion boards are available in two locations within YesLMS. A general, open discussion board is available to all system users via the main left-side menu. Within courses, an administrator has the option of inserting a topic-specific discussion board for a particular topic. This type of discussion board will be accessible only to people registered for the course. Within a course an administrator is able to create an assignment, with the option to save a file (handout) into the assignment. When the student (trainee) accesses the assignment, they can download the file (handout), then edit it as required by the instructor, then upload it after completion.
19.0	System must provide Quick links to documents from web menus. Example: Policy Manuals and Standard Forms	Y				There are multiple methods of linking to documents from within YesLMS. 1) Links can be easily inserted into the body of Lessons. Links can point to documents on external servers such as Dropbox, Box, Drive, etc. 2) Documents can be uploaded into a Lesson and they will be stored on the YesLMS server. YesLMS will work with MRS to link to desired documents within the MRS system that may be in a secure location.

20.0	The system must provide quick links from header menus to user defined sections. Example: Form Libraries and Document Libraries.	Y				Quick links to each user defined section (lesson, quiz, survey, assignment, discussion forum) of a course are visible at the left side of the screen. At any point the user can select a quick link and navigate to that section of the course. These quick links are not located within each page of the course. Rather, the quick links are built into the structure of the course outline which is displayed at the left side of the screen. For example, a library of documents can be created in a course using the Lesson tool and it can be given any name, such as "Document Library". The trainee taking the course will have the ability to see a quick link to the Document Library at all times at the left side of the screen.
21.0	All classes must have a quiz upon completion of the training material.	Y				All 63 courses offered through YesLMS have quizzes at the end of the course. All courses are eligible for CRC or a certificate of completion after successful completion (80% correct) of the course. MRS - When creating a course, the administrator has the option of creating a quiz. The quiz can be located at any point in the course, but it is often located at the bottom of the course so trainees will encounter it upon completion of the training material.
22.0	The system must allow for a settable passing score(percentage) for successful completion of a training class.	Y				The administrator has the ability to set a passing score (percentage) for each quiz, assignment and discussion board in a course. Within the Settings menu on each quiz and assignment, there is a selectable switch which dictates whether or not the quiz must be successfully completed in order for the course to be completed.
23.0	Allow development and implementation of online classes with immediate feedback from quizzes.	Y				Two types of quizzes are available within YesLMS. automatically graded and essay. There are three types of immediate feedback that can be given to a trainee when taking an automatically-graded quiz: 1) By default, the trainee's score is displayed at the end of the quiz; 2) There is an option in the quiz settings menu to allow for a review of all questions and answers to be displayed at the conclusion of the quiz; 3) There is an option in the quiz settings menu to allow for creation of positive, neutral or negative feedback to be given to the trainee after each quiz question is answered. This type of feedback is customizable on a per-question basis.
24.0	The system must provide a means to upload MRS created trainings	Y				Content from existing MRS trainings can be uploaded into YesLMS. YesLMS staff will assist MRS staff in providing the means and technical assistance to transfer current MRS trainings to YesLMS.
25.0	The system must provide a means to upload documents ex. Handouts etc.	Y				There are multiple methods of providing documents and handouts to trainees. 1) The Assignment tool within a course allows a document to be attached by the administrator, which can later be downloaded by the trainee. The trainee can upload the document after they have completed the assignment. 2) A document or resource can be provided for download to trainees in a Lesson via a hyperlink. 3) A document can be provided in a Lesson via an inline document insertion tool which allows the trainee to visually preview the document before downloading.
26.0	The system must provide the ability for any user to change contrast settings with one click.	Y				One-click contrast settings are available in the upper right corner of the screen at all times and for all users within YesLMS. The following options are available: default, white text on black background, yellow text on black background, yellow text on dark blue background.
27.0	The system must provide the ability to easily use zoom settings for all content.	Y				All elements of the YesLMS system are scalable and will render correctly at any level of zoom.
28.0	The system must provide responsive design that scales for any device: Computer Screens, Tablets, Phones.	Y				The YesLMS platform is designed from the ground up to be scalable for all types of devices and for all levels of user: desktop computer screens, tablets and smartphones. Icons are provided to allow an administrator to preview (before publication) any course in various modes: desktop, tablet, phone. This allows the administrator to easily see how the course will look to any user and on any device.

29.0	The system must provide a document library for State Staff.	Y				Documents can be stored in multiple locations within the YesLMS platform. For MRS, we suggest that a course should be created by YesLMS with the title of "State Staff Documents". This will allow for any number of documents to be embedded within the course. MRS will have multiple options for embedding documents as quick links or as preview snapshots. Both types of embedded documents can be downloaded by all system users.
30.0	The system must provide keyword search capabilities for the library as well as within a specific document in the library. (Ex. Policy Manual)	Y				A search field is located in the upper right corner of the course library page. It allows for keyword searching of course titles. Keyword searching of an attached document can be performed by either of two methods: 1) If the document is attached inline in a lesson using the "document insert mode", then it can be viewed by clicking the icon in the upper right corner of the document. The document will pop open into another browser tab and a keyword search can be performed by using the search function (Ctrl-F or Command-F). 2) If the document is attached using a hyperlink, then it must be downloaded and saved, then opened in order to do a keyword search.
31.0	The system must provide course registration for internal and external training and meetings by media type ex. Webinar, meeting, live Staff Development Unit (SDU) training, conference, etc.	Y				The system provides for registration of two types of courses: internal (On Demand or Live) and external (Live). For external (Live) courses, MRS has the option of specifying media type (webinar, live in-person meeting, live staff training, conference) in the lessons they build within the course.
32.0	The system must provide the ability to identify needed accommodations when registering for an event.	Y				The user database includes a field to allow for accommodations to be identified. This field can be filled out by the user during self-registration, or by the administrator when creating a new user.
33.0	The system must provide immediate CRC CEU Certificates upon successful completion of class	Y				The system provides the option of issuing immediate CRC CEU Certificates upon successful completion of a class. Within the Settings menu on each quiz, there is a selectable switch which dictates whether or not a CRC CEU certificate will be generated for the course upon successful completion of the quiz and successful completion of all course elements. The quiz settings also allow for entry of the CRC approval number for the course. Once these settings are selected by the administrator, any qualifying trainee will automatically receive a CRC CEU certificate upon successful completion of the class.
OPTIONAL						
34.0	The system should provide the ability to add new top-level departments.	Y				YesLMS allows for creation of user groups which can serve multiple functions. One purpose of Groups is to allow for users to be grouped according to their department. During registration an administrator can use groups to assign a class or classes to all members of a specific department. Another option is available if requested by MRS: YesLMS can set up separate instances of YesLMS with unique URLs for each department. Each URL will be completely independent of other URLs, meaning that reports, user groups and courses cannot be shared between the URLs.
35.0	The system should provide the ability to report on separate top-level departments.	Y				The Reports function in YesLMS allows for data to be filtered by Group. If user groups are set up to include members of specific departments, then the reports will give department-specific information.
36.0	The system should provide the ability to aggregate multiple top-level departments for reporting.	Y				Multiple top-level departments can be added to YesLMS using Groups. Reports can be custom generated by MRS within YesLMS to aggregate information from multiple Groups. If MRS chooses to have multiple separate instances of YesLMS set up with unique URLs, then the ability to aggregate information in Reports will not be available.

SCHEDULE B
PRICING

Summary

- YesLMS Platinum level Software as a Service (SAAS)
 - Unlimited registered users
 - Up to 500 active users per month
 - E-commerce
 - 24/7 support
 - Custom reports
 - 25 portals
 - Branding and customization
 - SSL for your private domain
 - Multi Language
- Unlimited Access to Entire YesLMS Course Library
 - Entire VRDG course library (63 courses) placed on YesLMS for MRS Vocational Rehabilitation access.
 - Course content:
 - Highly relevant content for today’s VR professionals
 - Written by national VR content experts.
 - Content updated quarterly, or as needed.
 - Accessible quizzes to test knowledge.
 - Universal design – the most accessible courses available anywhere
 - CRC credit provided for all courses at no additional cost.
 - New courses added as they become available at **no additional cost**.
 - All VRDG courses to be available for immediate access with purchase.
- One-Time System Setup
 - YesLMS will design a landing page using MRS branding and logo.
 - YesLMS will hold a full review with your team prior to officially launching your site.

Years 2021 - 2026	YesLMS Platform Platinum	VRDG Course Library	One-time System Setup	Total Due
Price per calendar year from start date.	\$649 per month 12 months \$7,788	\$200 per employee for unlimited access to all 63 VR courses, pre-loaded on YesLMS. YesLMS typically	\$2,000	

		<p>adds 4-8 courses per year. No cost for additional content added to MRS system.</p> <p>700 employees identified by RFP.</p> <p>YesLMS grants unlimited access for up to 800 (potential savings of \$20,000 per year)</p>		
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2021	\$7,788	\$140,000	\$2,000	\$149,788
2022	\$7,788	\$140,000		\$147,788
2023	\$7,788	\$140,000		\$147,788
2024	\$7,788	\$140,000		\$147,788
2025	\$7,788	\$140,000		\$147,788
Total				\$740,940.00

Licensing and Hosting costs will be paid after installation, configuration, and State testing and acceptance of the Solution.

1. **Implementation Fees.** All costs associated with Implementation Services are included below (e.g. configuration, customization, migration, integration, testing, etc.) (the “**Implementation Fees**”). All costs are firm fixed.

One-time set-up fee of \$2,000.

2. **Postproduction Warranty.** The Contractor must provide a 90 calendar days postproduction warranty at no cost to the State. The postproduction warranty will meet all requirements of the contract, including all Support Services identified in Schedule D.

3. **Rate Card for Ancillary Professional Services.**

Resource	On-Site Hourly Rate	On-Shore and Off-Site Hourly Rate	Off-Shore Hourly Rate
YesLMS staff	\$75 per hour <i>Provided as part of the subscription rate at no additional cost to MRS</i>	\$75 per hour <i>Provided as part of the subscription rate at no additional cost to MRS</i>	\$75 per hour <i>Provided as part of the subscription rate at no additional cost to MRS</i>

4. **Open Source or Third Party Products**

The Contractor must identify any open source or third-party products that include a separate licensing fee and will be used in connection with the proposed Solution.

Product	Price
CRCC Subscription	<i>At no additional cost to MRS, a \$6930.00 per year savings</i>

5. Additional Pricing Terms

If Contractor reduces its prices, or offers a lower price to any other entity, private or public, 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 fifteen (15) Business Days of the reduction taking effect.

Travel and Expenses

The State does not pay for overtime or travel expenses.

SCHEDULE C
INSURANCE

Required Coverage.

1.1 **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 Permitted 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 \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations	Contractor must have their policy endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds using endorsement CG 20 10 11 85, or both CG 20 10 12 19 and CG 20 37 12 19.
Employers Liability Insurance	
<u>Minimal Limits:</u> \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease.	
Privacy and Security Liability (Cyber Liability) Insurance	
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence \$1,000,000 Annual Aggregate	Policy must cover information security and privacy liability, privacy notification costs, regulatory defense and penalties, and website media content liability.

1.2 If Contractor's policy contains limits higher than the minimum limits, the State is entitled to coverage to the extent of the higher limits. The minimum limits are not intended and may not be construed to limit any liability or indemnity of Contractor to any indemnified party or other persons.

1.3 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 contract work; (b) maintain

coverage and provide evidence of coverage for at least three (3) years after completion of the contract of work; 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.

1.4 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 Permitted 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.

Non-waiver. This Insurance Schedule is not intended to and is not to be construed in any manner to waive, restrict or limit the liability of either party for any obligations under this Contract (including any provisions hereof requiring Contractor to indemnify, defend and hold harmless the State).

SCHEDULE D
SERVICE LEVEL AGREEMENT

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

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

“Availability” has the meaning set forth in **Section 3.1**.

“Availability Requirement” has the meaning set forth in **Section 3.1**.

“Available” has the meaning set forth in **Section 3.1**.

“Contact List” means a current list of Contractor contacts and telephone numbers set forth in the attached **Schedule D – Attachment 1** to this Schedule to enable the State to escalate its Support Requests, including: (a) the first person to contact; and (b) the persons in successively more qualified or experienced positions to provide the support sought.

“Corrective Action Plan” has the meaning set forth in **Section 4.6**.

“Critical Service Error” has the meaning set forth in **Section 4.4(a)**.

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

“High Service Error” has the meaning set forth in **Section 4.4(a)**.

“Low Service Error” has the meaning set forth in **Section 4.4(a)**.

“Medium Service Error” has the meaning set forth in **Section 4.4(a)**.

“Resolve” has the meaning set forth in **Section 4.4(b)**.

“RPO” or **“Recovery Point Objective”** means the maximum amount of potential data loss in the event of a disaster.

“RTO” or **“Recovery Time Objective”** means the maximum period of time to fully restore the Hosted Services in the case of a disaster.

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

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

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

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

“Service Level Credits” has the meaning set forth in **Section 4.5**.

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

“**Service Period**” has the meaning set forth in **Section 3.1**.

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

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

“**Support Hours**” means 7 am to 6 pm ET, Monday – Friday excluding State Holidays.

“**Support Request**” has the meaning set forth in **Section 4.4(a)**.

“**Support Service Level Requirements**” has the meaning set forth in **Section 4.4**.

2. Service Availability and Service Availability Credits.

2.1 Availability Requirement. Contractor will make the Hosted Services and Software Available, as measured over the course of each calendar month during the Term and any additional periods during which Contractor does or is required to perform any Hosted Services (each such calendar month, a “**Service Period**”), at least 99.98% of the time, excluding only the time the Hosted Services are not Available solely as a result of one or more Exceptions (the “**Availability Requirement**”). “**Available**” means the Hosted Services and Software are available and operable for access and use by the State and its Authorized Users over the Internet in material conformity with the Contract. “**Availability**” has a correlative meaning. The Hosted Services and Software are not considered Available in the event of a material performance degradation or inoperability of the Hosted Services and Software, in whole or in part. The Availability Requirement will be calculated for the Service Period as follows: $(\text{Actual Uptime} - \text{Total Minutes in Service Period Hosted Services or Software are not Available Due to an Exception}) \div (\text{Scheduled Uptime} - \text{Total Minutes in Service Period Hosted Services or Software are not Available Due to an Exception}) \times 100 = \text{Availability}$.

2.2 Exceptions. No period of Hosted Services degradation or inoperability will be included in calculating Availability to the extent that such downtime or degradation is due to any of the following (“**Exceptions**”):

- (a) Failures of the State’s or its Authorized Users’ internet connectivity;
- (b) Scheduled Downtime as set forth in **Section 3.3**.

2.3 Scheduled Downtime. Contractor must notify the State at least twenty-four (24) hours in advance of all scheduled outages of the Hosted Services or Software in whole or in part (“**Scheduled Downtime**”). All such scheduled outages will: (a) last no longer than five (5) hours; (b) be scheduled between the hours of 12:00 a.m. and 5:00 a.m., Eastern Time; and (c) occur no more frequently than once per week; provided that Contractor may request the State to approve extensions of Scheduled Downtime above five (5) hours, and such approval by the State may not be unreasonably withheld or delayed.

2.4 Software Response Time. Software response time, defined as the interval from the time the end user sends a transaction to the time a visual confirmation of transaction completion is received, must be less than two (2) seconds for 98% of all transactions. Unacceptable response times shall be considered to make the Software unavailable and will count against the Availability Requirement.

2.5 Service Availability Reports. Within thirty (30) days after the end of each Service Period, Contractor will provide to the State a report describing the Availability and other performance of the Hosted Services and Software during that calendar month as compared to the Availability Requirement. The report must be in electronic or such other form as the State may approve in writing and shall include, at a minimum: (a) the actual performance of the Hosted Services and Software relative to the Availability Requirement; and (b) if Hosted Service performance has failed in any respect to meet or exceed the Availability Requirement during the reporting period, a description in sufficient detail to inform the State of the cause of such failure and the corrective actions the Contractor has taken and will take to ensure that the Availability Requirement are fully met.

2.6 Remedies for Service Availability Failures.

- (a) If the actual Availability of the Hosted Services and Software is less than the Availability Requirement for any Service Period, such failure will constitute a Service Error for which Contractor will issue to the State the following credits on the fees payable for Hosted Services and Software provided during the Service Period (“**Service Availability Credits**”):

Availability	Credit of Fees
≥99.98%	None
<99.98% but ≥99.0%	15%
<99.0% but ≥95.0%	50%
<95.0%	100%

(b) Any Service Availability Credits due under this **Section 3.6** will be applied in accordance with payment terms of the Contract.

(c) If the actual Availability of the Hosted Services and Software is less than the Availability Requirement in any two (2) of four (4) consecutive Service Periods, then, in addition to all other remedies available to the State, the State may terminate the Contract on written notice to Contractor with no liability, obligation or penalty to the State by reason of such termination.

3. Support and Maintenance Services. Contractor will provide IT Environment Service and Software maintenance and support services (collectively, "**Software Support Services**") in accordance with the provisions of this **Section 4**. The Software Support Services are included in the Services, and Contractor may not assess any additional fees, costs or charges for such Software Support Services.

3.1 Support Service Responsibilities. Contractor will:

(a) correct all Service Errors in accordance with the Support Service Level Requirements, including by providing defect repair, programming corrections and remedial programming;

(b) provide unlimited telephone support from 7 am to 6 pm ET, Monday-Friday excluding State Holidays;

(c) provide unlimited online support 24 hours a day, seven days a week;

(d) provide online access to technical support bulletins and other user support information and forums, to the full extent Contractor makes such resources available to its other customers; and

(e) respond to and Resolve Support Requests as specified in this **Section 4**

3.2 Service Monitoring and Management. Contractor will continuously monitor and manage the Hosted Services and Software to optimize Availability that meets or exceeds the Availability Requirement. Such monitoring and management includes:

(a) proactively monitoring on a twenty-four (24) hour by seven (7) day basis all Hosted Service functions, servers, firewall and other components of Hosted Service security;

(b) if such monitoring identifies, or Contractor otherwise becomes aware of, any circumstance that is reasonably likely to threaten the Availability of the Hosted Service, taking all necessary and reasonable remedial measures to promptly eliminate such threat and ensure full Availability; and

(c) if Contractor receives knowledge that the Hosted Service or any Hosted Service function or component is not Available (including by written notice from the State pursuant to the procedures set forth herein):

(i) confirming (or disconfirming) the outage by a direct check of the associated facility or facilities;

(ii) If Contractor's facility check in accordance with clause (i) above confirms a Hosted Service outage in whole or in part: (A) notifying the State in writing pursuant to the procedures set forth herein that an outage has occurred, providing such details as may be available, including a Contractor trouble ticket number, if appropriate, and time of outage; and (B) working all problems causing and caused by the outage until they are Resolved as Critical Service Errors in accordance with the Support Request Classification set forth in **Section 4.4**, or, if determined to be an internet provider problem, open a trouble ticket with the internet provider; and

- (iii) Notifying the State that Contractor has fully corrected the outage and any related problems, along with any pertinent findings or action taken to close the trouble ticket.

3.3 Service Maintenance. Contractor will continuously maintain the Hosted Services and Software to optimize Availability that meets or exceeds the Availability Requirement. Such maintenance services include providing to the State and its Authorized Users:

(a) all updates, bug fixes, enhancements, Maintenance Releases, New Versions and other improvements to the Hosted Services and Software, including the Software, that Contractor provides at no additional charge to its other similarly situated customers; provided that Contractor shall consult with the State and is required to receive State approval prior to modifying or upgrading Hosted Services and Software, including Maintenance Releases and New Versions of Software; and

(b) all such services and repairs as are required to maintain the Hosted Services and Software or are ancillary, necessary or otherwise related to the State's or its Authorized Users' access to or use of the Hosted Services and Software, so that the Hosted Services and Software operate properly in accordance with the Contract and this Schedule.

3.4 Support Service Level Requirements. Contractor will correct all Service Errors and respond to and Resolve all Support Requests in accordance with the required times and other terms and conditions set forth in this **Section 4.4 ("Support Service Level Requirements")**, and the Contract.

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

Support Request Classification	Description: Any Service Error Comprising or Causing any of the Following Events or Effects
Critical Service Error	<ul style="list-style-type: none"> • Issue affecting entire system or single critical production function; • System down or operating in materially degraded state; • Data integrity at risk; • Declared a Critical Support Request by the State; or • Widespread access interruptions.
High Service Error	<ul style="list-style-type: none"> • Primary component failure that materially impairs its performance; or • Data entry or access is materially impaired on a limited basis.
Medium Service Error	<ul style="list-style-type: none"> • IT Environment Services and Software is operating with minor issues that can be addressed

	with an acceptable (as determined by the State) temporary work around.
Low Service Error	<ul style="list-style-type: none"> Request for assistance, information, or services that are routine in nature.

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

Support Request Classification	Service Level Metric (Required Response Time)	Service Level Metric (Required Resolution Time)	Service Level Credits (For Failure to Respond to any Support Request Within the Corresponding Response Time)	Service Level Credits (For Failure to Resolve any Support Request Within the Corresponding Required Resolution Time)
Critical Service Error	One (1) hour	Three (3) hours	Five percent (5%) of the Fees for the month in which the initial Service Level Failure begins and five percent (5%) of such monthly Fees for each additional hour or portion thereof that the corresponding Service Error is not responded to within the required response time.	Five percent (5%) of the Fees for the month in which the initial Service Level Failure begins and five percent (5%) of such monthly Fees for the first additional hour or portion thereof that the corresponding Service Error remains un-Resolved, which amount will thereafter double for each additional

				one-hour increment.
High Service Error	One (1) hour	Four (4) hours	Three percent (3%) of the Fees for the month in which the initial Service Level Failure begins and three percent (3%) of such monthly Fees for each additional hour or portion thereof that the corresponding Service Error is not responded to within the required response time.	Three percent (3%) of the Fees for the month in which the initial Service Level Failure begins and three percent (3%) of such monthly Fees for the first additional hour or portion thereof that the corresponding Service Error remains un-Resolved, which amount will thereafter double for each additional one-hour increment.
Medium Service Error	Three (3) hours	Two (2) Business Days	N/A	N/A
Low Service Error	Three (3) hours	Five (5) Business Days	N/A	N/A

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

3.8 Support Service Level Credits. Failure to achieve any of the Support Service Level Requirements for Critical and High Service Errors will constitute a Service Level Failure for which Contractor will issue to the State the corresponding service credits set forth in **Section 4.4(b)** (“**Service Level Credits**”) in accordance with payment terms set forth in the Contract.

3.9 Corrective Action Plan. If two or more Critical Service Errors occur in any thirty (30) day period during (a) the Term or (b) any additional periods during which Contractor does or is required to perform any Hosted Services, Contractor will promptly investigate the root causes of these Service Errors and provide to the State within five (5) Business Days of its receipt of notice of the second such Support Request an analysis of such root causes and a proposed written corrective action plan for the State’s review, comment and approval, which, subject to and upon the State’s written approval, shall be a part of, and by this reference is incorporated in, the Contract as the parties’ corrective action plan (the “**Corrective Action Plan**”). The Corrective Action Plan must include, at a minimum: (a) Contractor’s commitment to the State to devote the appropriate time, skilled

personnel, systems support and equipment and other resources necessary to Resolve and prevent any further occurrences of the Service Errors giving rise to such Support Requests; (b) a strategy for developing any programming, software updates, fixes, patches, etc. necessary to remedy, and prevent any further occurrences of, such Service Errors; and (c) time frames for implementing the Corrective Action Plan. There will be no additional charge for Contractor's preparation or implementation of the Corrective Action Plan in the time frames and manner set forth therein.

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

4.1 Data Storage. Contractor will provide sufficient storage capacity to meet the needs of the State at no additional cost.

4.2 Data Backup. Contractor will conduct, or cause to be conducted, daily back-ups of State Data and perform, or cause to be performed, other periodic offline back-ups of State Data on at least a weekly basis and store and retain such back-ups as specified in **Schedule A**. Contractor must, within five (5) Business Days of the State's request, provide the State, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Contractor), an extract of State Data in the format specified by the State.

4.3 Data Restoration. If the data restoration is required due to the actions or inactions of the Contractor or its subcontractors, Contractor will promptly notify the State and complete actions required to restore service to normal production operation. If requested, Contractor will restore data from a backup upon written notice from the State. Contractor will restore the data within one (1) Business Day of the State's request. Contractor will provide data restorations at its sole cost and expense.

4.4 Disaster Recovery. Throughout the Term and at all times in connection with its actual or required performance of the Services, Contractor will maintain and operate a backup and disaster recovery plan to achieve a Recovery Point Objective (RPO) of 72 hours, and a Recovery Time Objective (RTO) of 24 hours (the "**DR Plan**"), and implement such DR Plan in the event of any unplanned interruption of the Hosted Services. Contractor's current DR Plan, revision history, and any reports or summaries relating to past testing of or pursuant to the DR Plan are attached as **Schedule F**. Contractor will actively test, review and update the DR Plan on at least an annual basis using industry best practices as guidance. Contractor will provide the State with copies of all such updates to the Plan within fifteen (15) days of its adoption by Contractor. All updates to the DR Plan are subject to the requirements of this **Section 6**; and provide the State with copies of all reports resulting from any testing of or pursuant to the DR Plan promptly after Contractor's receipt or preparation. If Contractor fails to reinstate all material Hosted Services and Software within the periods of time set forth in the DR Plan, the State may, in addition to any other remedies available under this Contract, in its sole discretion, immediately terminate this Contract as a non-curable default.

SCHEDULE D - Attachment 1 – Contact List

a) First Contact

Onboarding Specialist – Mike Rafferty - 608-819-0708 – Miker@yeslms.com

b) More qualified

Project Manager – Linda Hedenblad - 608-217-6771 – Linda@yeslms.com

Contractor Security Officer – Sean Kearney - 303-882-4620 – Sean@yeslms.com

SCHEDULE E
DATA SECURITY REQUIREMENTS

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

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

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

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

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

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

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

“**PSP**” or “**PSPs**” means the State’s IT Policies, Standards and Procedures.

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

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

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

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

- (a) ensure the security and confidentiality of the State Data;
- (b) protect against any anticipated threats or hazards to the security or integrity of the State Data;
- (c) protect against unauthorized disclosure, access to, or use of the State Data;
- (d) ensure the proper disposal of any State Data in Contractor’s or its subcontractor’s possession; and
- (e) ensure that all Contractor Representatives comply with the foregoing.

The State has established Information Technology (IT) PSPs to protect IT resources under the authority outlined in the overarching State 1305.00 Enterprise IT Policy. In no case will the safeguards of Contractor’s data privacy and information security program be less stringent than the safeguards used by the State, and Contractor must at all times comply with all applicable public and non-public State IT policies and standards, of which the publicly available ones are at https://www.michigan.gov/dtmb/0,5552,7-358-82547_56579_56755---,00.html.

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

4. Acceptable Use Policy. To the extent that Contractor has access to the State's IT environment, Contractor must comply with the State's Acceptable Use Policy, see https://www.michigan.gov/documents/dtmb/1340.00.01_Acceptable_Use_of_Information_Technology_Standard_458958_7.pdf. All Contractor Personnel will be required, in writing, to agree to the State's Acceptable Use Policy before accessing State systems. The State reserves the right to terminate Contractor's and/or subcontractor(s) or any Contractor Personnel's access to State systems if the State determines a violation has occurred.

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

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

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

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

5.4 maintain and enforce an information security program including safety and physical and technical security policies and procedures with respect to its Processing of the State Data that complies with the requirements of the State's data security policies as set forth in this Contract, and must, at a minimum, remain compliant with FISMA and NIST Special Publication 800-53 MOD Controls using identified controls and minimum values as established in applicable State PSPs;

5.5 provide technical and organizational safeguards against accidental, unlawful or unauthorized access to or use, destruction, loss, alteration, disclosure, encryption, transfer, commingling or processing of such information that ensure a level of security appropriate to the risks presented by the processing of State Data and the nature of such State Data, consistent with best industry practice and applicable standards (including, but not limited to, compliance with FISMA, NIST, CMS, IRS, FBI, SSA, HIPAA, FERPA and PCI requirements as applicable);

5.6 take all reasonable measures to:

(a) secure and defend all locations, equipment, systems and other materials and facilities employed in connection with the Services against "malicious actors" and others who may seek, without authorization, to destroy, disrupt, damage, encrypt, modify, copy, access or otherwise use Hosted Services or the information found therein; and

(b) prevent (i) the State and its Authorized Users from having access to the data of other customers or such other customer's users of the Services; (ii) State Data from being commingled with or contaminated by the data of other customers or their users of the Services; and (iii) unauthorized access to any of the State Data;

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

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

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

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

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

8. Security Audits.

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

8.2 Without limiting any other audit rights of the State, the State has the right to review Contractor's data privacy and information security program prior to the commencement of Services and from time to time during the term of this Contract. The State, at its own expense, is entitled to perform, or to have performed, an on-site audit of Contractor's data privacy and information security program. If the State chooses to perform an on-site audit, Contractor will, make all such records, appropriate personnel and relevant materials available during normal business hours for inspection and audit by the State or an independent data security expert that is reasonably acceptable to Contractor, provided that the State: (i) gives Contractor at least five (5) Business Days prior notice of any such audit; (ii) undertakes such audit no more than once per calendar year, except for good cause shown; and (iii) conducts or causes to be conducted such audit in a manner designed to minimize disruption of Contractor's normal business operations and that complies with the terms and conditions of all data confidentiality, ownership, privacy, security and restricted use provisions of the Contract. The State may, but is not obligated to, perform such security audits, which shall, at the State's option and request, include penetration and security tests, of any and all Hosted Services and their housing facilities and operating environments.

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

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

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

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

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

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

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

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

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

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

(a) For Software that includes third party and open source software, all included third party and open source software must be documented and the source supplier must be monitored by the Contractor for notification of identified vulnerabilities and remediation. SCA scans may be included as part of SAST and DAST scanning or employ the use of an SCA tool to meet the scanning requirements. These scans must be completed for all third party and open source software initially, for all updated third party and open source software, and for all third party and open source software in each major release and Contractor must provide the State a vulnerability assessment after Contractor has completed the required scans if not provided as part of SAST and/or DAST reporting.

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

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

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

10. Infrastructure Scanning.

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

11. Nonexclusive Remedy for Security Breach.

11.1 Any failure of the Services to meet the requirements of this Schedule with respect to the security of any State Data or other Confidential Information of the State, including any related backup, disaster recovery or other policies, practices or procedures, is a material breach of the Contract for which the State, at its option, may terminate the Contract immediately upon written notice to Contractor without any notice or cure period, and Contractor must promptly reimburse to the State any Fees prepaid by the State prorated to the date of such termination.

SCHEDULE G – Transition In and Out

(Vendor to describe how they will meet the State's needs for transition in and out)

1) Transition-In: As per Schedule A, Statement of Work Section 11 (Migration), no data migration will be required.

Contractor project manager will:

- Consult with MRS administrators to assure that they have the skills to migrate any current content that MRS has to YesLMS
 - These consultations will occur virtually.
 - Additional consultations are offered at no additional cost to MRS.
- Contractor project manager will assist MRS administrators in the transfer of material in as many sessions as needed.

Additionally: Super administrators, administrators, and instructor training recommendation (10 administrators outlined by MRS in this RFP)

To be scheduled with MRS administrators at their earliest convenience.

- 1-2 hour virtual training with the Contractor project manager and Contractor onboarding specialist for an extended demo. In this initial meeting, MRS staff will be introduced to the dedicated onboarding specialist, guided through the platform and encouraged to ask questions as they go.
- Follow-up virtual meeting recommended for 14-30 days after initial meeting, to address the more complex questions this group may have after working within the system.

Meeting with Super Admins:

- 1-2 hour virtual meeting any time after the initial meeting, to check-in and address the more complex questions super administrators may have after working within the system. In addition, super administrators will receive guidance specific to their role including assigning administrator roles and developing reports.

Trainees:

- YesLMS is very easy for trainees to use. End users typically do not need to be trained. However, if MRS would like to offer trainees a demo on using the YesLMS, Contractor project manager will assure that this training takes place.
 - Contractor will offer an initial 1-hour virtual session for trainees. This session can be recorded and used as a resource to guide future hires, or to provide information to MRS employees who are not able to attend the original session.

YesLMS will provide:

- User manual applicable to all system roles
- Pre-recorded videos and online content created by Contractor specialists on how to use the platform.

2) Transition Out

At the end of this term, if MRS chooses to Transition from YesLMS platform, Contractor will:

- Assist MRS with migrating MRS content to a new platform.
- Reports from YesLMS (including those involving YesLMS course content) will be downloaded into a CSV or Excel file
- Courses offered through YesLMS (VR courses mentioned in this Contract) will not be available for transfer to the new system.

SCHEDULE H - Federal Provisions Addendum

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

1. Equal Employment Opportunity

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

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of [Executive Order 11246](#) of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by [Executive Order 11246](#) of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in [Executive Order 11246](#) of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in [Executive Order 11246](#) of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of [Executive Order 11246](#) of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

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

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

2. Davis-Bacon Act (Prevailing Wage)

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

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

3. Copeland "Anti-Kickback" Act

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

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

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

4. Contract Work Hours and Safety Standards Act

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

- (1) Overtime requirements. No Contractor or Subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. The State shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or Subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- (4) Subcontracts. The Contractor or Subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

5. Rights to Inventions Made Under a Contract or Agreement

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

6. Clean Air Act and the Federal Water Pollution Control Act

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

Clean Air Act

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

Federal Water Pollution Control Act

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

7. Debarment and Suspension

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

- (1) This Contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by the State. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2

C.F.R. pt. 3000, subpart C, in addition to remedies available to the State, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

8. Byrd Anti-Lobbying Amendment

Contractors who apply or bid for an award of **\$100,000 or more** shall file the required certification in Exhibit 1 – Byrd Anti-Lobbying Certification below. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

9. Procurement of Recovered Materials

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

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

10. Additional FEMA Contract Provisions.

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

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

d. In compliance with the Disaster Recovery Act of 2018, the State and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

(2) Changes.

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

(3) DHS Seal, Logo, And Flags.

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

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

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

(5) No Obligation by Federal Government.

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

(6) Program Fraud and False or Fraudulent Statements or Related Acts.

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

Schedule H, Attachment 1 - Byrd Anti-Lobbying Certification

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

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

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

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

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

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



Signature of Contractor's Authorized Official

Linda Hedenblad CEO

Name and Title of Contractor's Authorized Official

1/7/2021

Date



Online Course Information

Our online courses are designed using the most current information on the subjects and are delivered using YesLMS.

Benefits of VRDG Courses

Our online course system is unique. No other organization matches our combination of extensive VR subject matter, CRC certificates upon completion, progress reports for administrators, and 24/7 technical support all at affordable prices. Our courses are continuously updated and include the impact of WIOA and the 2017 CRC Code of Ethics.

Course Objectives

Participants in the courses will:

- Gain an understanding of subject from a VR perspective.
- Receive additional materials and resources specific to each topic.
- Have an opportunity for active reflection.
- Practice problem-solving through case studies and quizzes.

CRC and Certificate of Completion

After successfully completing the course and any required quizzes, each participant will receive either a CRC Certificate or a certificate of completion. The certificate will be provided electronically for immediate download in a printable PDF format.

Reports

YesLMS has extensive capabilities for report creation. Reports may include:

- Names of participants and course progress
- Completion by name or by subject
- Areas of difficulty for individual or groups as determined through testing.
- Number of times course has been accessed by individual or group.

All courses are updated a minimum of one time per year to assure relevance and accuracy of content.

2021 YesLMS Courses

ETHICS COURSES

- Ethical Thinking
- Ethics – Exploring the CRC Code
- Maintaining Ethical Boundaries
- Ethics – The Role of Confidentiality
- Ethics for Community Rehab Providers (CRP's)

INTRO TO VR COURSES

- History of VR
- Intro to VR Basics
- Intro to VR – Case Closure
- Intro to VR – Comprehensive Assessment
- Intro to VR – Eligibility
- Intro to VR – Plan for Employment
- Intro to VR – Job Development and Employment Acquisition

MEDICAL ASPECTS OF DISABILITY

Medical Aspects of Disability – Course 1

The Medical Aspects of Disability series is based on the Disability Handbook and used in coordination with its author Dr. Jason Andrew.

- Fractures
- Spinal Cord Injury
- Amputations
- Prosthetic Primer
- TBI
- PTSD
- Burns

Medical Aspects of Disability – Course 2

- Mood Disorders
- Bipolar and Related Disorders
- Depressive Disorders
- Personality Disorders
- Schizophrenia Spectrum
- Autism Spectrum Disorder
- Intellectual Disabilities

□ Specific Learning Disorder

Medical Aspects of Disability – Course 3

- Pain
- Complex Regional Pain Syndrome
- Chronic Low Back Pain
- Fibromyalgia
- Chronic Fatigue Syndrome
- Carpal-Tunnel Syndrome
- Chronic Illness
- Multiple Sclerosis (MS)
- Asthma
- Arthritis
- Diabetes Mellitus
- Respiratory disease
- Allergies

Medical Aspects of Disability – Course 4

- Motor Neuron Diseases
- Amyotrophic Lateral Sclerosis
- Progressive Bulbar Palsy
- Progressive Spinal Muscular Atrophy
- Movement Disorders
- Essential Tremor
- Cerebral Palsy
- Multiple Sclerosis
- Post-Polio Syndrome
- Seizure Disorder
- Spina Bifida
- Albinism

Medical Aspects of Disability – Course 5

- Cardiovascular Disorders
- Stroke
- Sickle Cell Anemia
- HIV (Aids)
- Hemophilia
- Renal- Kidney Disease
- Cancer
- Obesity
- Eating Disorders
- Substance Related and Addictive Disorders

- Co-Occurring Disorders

Traumatic Brain Injury Courses

- TBI – Changes in Physical Functioning
- TBI – Emotional and Behavioral Effects
- TBI – Signs, Symptoms and Diagnosis

Working with Individuals who are Deaf Blind Courses

- Introduction to Deaf-Blindness and Etiologies
- Communicating with People who are Deaf Blind.
- Ensuring Equal Access and Participation
- Remaining Current
- The Role of the Vocational Rehabilitation Counselor

Autism Spectrum

- Autism Spectrum Disorders and Employment

Developmental and Intellectual Disabilities

- WIOA, HCBS, EF, Impact Services to people with ID and DD

UNIVERSAL DESIGN AND ACCESSIBILITY COURSES

- An Introduction to Universal Design
- Universal Design – Assistive Technology and UDL for Learning

VR COUNSELING COURSES

- Counseling Immigrants, Increasing our Awareness
- Effectively Managing VR Caseloads
- Understanding the NET – National Employment Team

ACCESSIBLE RECORDED WEBINARS

- Borderline Personality Disorder
- Encouraging Open and Positive Communication
- Enhancing Everyday Resilience
- Ethics and Boundaries
- Home Modifications
- Overcoming Significant Barriers to Employment
- Succession Planning Part 1: Crisis of Governance
- Succession Planning Part 1: Foundation for Success Planning
- Succession Planning Part 1: Developing a Plan and Measuring Success
- Thinking Ethically: Avoiding common pitfalls
- Trauma Informed Care
- Universal Design for Learning: Planning Flexible and Inclusive VR Services

- Working with American Indians
- Working with Ex-Offenders; Improving Employment Outcomes
- Working with Recent Immigrants

New courses are added regularly and will be added to MRS platform at no additional cost.