STATE OF MICHIGAN
CENTRAL PROCUREMENT SERVICES
Department of Technology, Management, and Budget
525 W. ALLEGAN ST., LANSING, MICHIGAN 48913
P.O. BOX 30026 LANSING, MICHIGAN 48909

<u>CONTRACT CHANGE NOTICE</u>

Change Notice Number **2**

to

Contract Number **220000000203**

CONTRACTOR		STATE		
Resultant, LLC		Program Manager	Heather Gay	MDOC
115 W. Allegan St., Suite 430			517-243-4762	
Lansing, MI 48909			gayh@michigan.gov	
Ashleigh Greene		Contract Administrator	Jarrod Barron	DTMB
586-612-5535			(517) 249-0406	
agreene@resultant.com			barronj1@michigan.gov	
VS0153211				

CONTRACT SUMMARY			
LEARNING MANAGEMENT SYSTEM			
INITIAL EFFECTIVE DATE	**INITIAL EXPIRATION DATE**	**INITIAL AVAILABLE OPTIONS**	**EXPIRATION DATE BEFORE**
December 16, 2021	December 15, 2026	10 - 1 Year	December 15, 2026
PAYMENT TERMS		**DELIVERY TIMEFRAME**	
NET 45			
ALTERNATE PAYMENT OPTIONS			**EXTENDED PURCHASING**
☐ P-Card ☐ PRC ☐ Other			☒ Yes ☐ No
MINIMUM DELIVERY REQUIREMENTS			

DESCRIPTION OF CHANGE NOTICE				
OPTION	**LENGTH OF OPTION**	**EXTENSION**	**LENGTH OF EXTENSION**	**REVISED EXP. DATE**
☐		☐		December 15, 2026
CURRENT VALUE	**VALUE OF CHANGE NOTICE**		**ESTIMATED AGGREGATE CONTRACT VALUE**	
$11,158,651.00	$0.00		$11,158,651.00	

DESCRIPTION
Effective May 1, 2022, this Contract is hereby amended to include updates to the Chromebook payment stream and add the Mobile Guardian under Managed Services, per the below documentation. 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
MDOC	Heather Gay	517-243-4762	gayh@michigan.gov
DTMB	David Enslin	517-930-6332	Enslind@michigan.gov

Michigan Department of Corrections
Learning Management Platform – Additional Security Features

SCOPE OF WORK

The DTMB Security team requests the ability to granularly monitor inmate actions on the chromebooks at all times in a dashboard view. This monitoring capability is not inherently available through the Google Workspace Admin console or the Chrome Enterprise Management Accounts therefore an additional tool through Mobile Guardian is required for each device on the system. The Mobile Guardian Campus solution will allow enhanced Classroom Management tools, web filtering and an MDM toolset.

TIMELINE AND FEES

Timeline: 2 week deployment

Estimated Fees: $19.20 per device (2,500) per year. 3 year commitment for a total of $144,000.

The following language is being added:
Ordering. Contractor is not authorized to begin performance until receipt of purchase order or delivery order from the State of Michigan.

Payment Stream for Chromebooks

For only the ordering of Chromebooks, the payment stream is as follows:

MILESTONE	MILESTONE PAYMENT
Upon issuance of delivery orders	50%
Upon successful acceptance and testing, per the Hardware Schedule.	50%

STATE OF MICHIGAN
CENTRAL PROCUREMENT SERVICES

Department of Technology, Management, and Budget

525 W. ALLEGAN ST., LANSING, MICHIGAN 48913
P.O. BOX 30026 LANSING, MICHIGAN 48909

<u>CONTRACT CHANGE NOTICE</u>

Change Notice Number **1**

to

Contract Number **220000000203**

CONTRACTOR		STATE		
Resultant, LLC		Program Manager	Various	
115 W. Allegan St., Suite 430				
Lansing, MI 48909				
Ashleigh Greene		Contract Administrator	Jarrod Barron	DTMB
586-612-5535			(517) 249-0406	
agreene@resultant.com			barronj1@michigan.gov	
VS0153211				

CONTRACT SUMMARY			
MDOC LEARNING MANAGEMENT SYSTEM			
INITIAL EFFECTIVE DATE	**INITIAL EXPIRATION DATE**	**INITIAL AVAILABLE OPTIONS**	**EXPIRATION DATE BEFORE**
December 16, 2021	December 15, 2026	10 - 1 Year	December 15, 2026
PAYMENT TERMS		**DELIVERY TIMEFRAME**	
Net 45			
ALTERNATE PAYMENT OPTIONS			**EXTENDED PURCHASING**
☐ P-Card ☐ PRC ☐ Other			☒ Yes ☐ No
MINIMUM DELIVERY REQUIREMENTS			

DESCRIPTION OF CHANGE NOTICE				
OPTION	**LENGTH OF OPTION**	**EXTENSION**	**LENGTH OF EXTENSION**	**REVISED EXP. DATE**
☐		☐		December 15, 2026
CURRENT VALUE	**VALUE OF CHANGE NOTICE**	**ESTIMATED AGGREGATE CONTRACT VALUE**		
$11,158,651.00	$0.00	$11,158,651.00		

DESCRIPTION
Effective April 1, 2022 this Contract is hereby amended to include the following changes identified in the below documentation. 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
MDOC	Heather Gay	517-243-4762	gayh@michigan.gov
DTMB	David Enslin	517-930-6332	Enslind@michigan.gov

Updates to Resultant Contract 220000000203

1) **Schedule A Statement of Work:**
   Adding the following language to Section 1. Background, Program Overview:

MDOC Correctional Facilities Administration's (CFA) use of Electronic Law Library, currently LexisNexis, will also be involved in this project. There is potential to utilize the LMS for other inmate support services.

2) **Schedule A Statement of Work:**
   Identifying the following State resources for contact purposes:

MDOC Contract Monitor
Name: Edward Freeman
Phone: (517) 285-5914
Email: freemane1@michigan.gov

MDOC Program Manager - ELL
Name: Adrian Dirschell
Phone: (517) 780-5909
Email: dirschella@michigan.gov

3) **Schedule A Statement of Work:**
   Adding Additional MDOC Specific Requirements and the Vendor Handbook:

The Contractor/subcontractor and any staff assigned to this contract will be subject to the following security procedures:

A.   No active warrants or pending charges on any staff assigned to this contract.

B.   MDOC reserves the right to approve, decline, or remove Contractor and subcontractor staff from providing services on this Contract.

C.   Not under investigation or under disciplinary action of the Michigan Department of Licensing and Regulatory Affairs.

D.   Has not engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility or other institution as defined in 42 U.S.C. 1997.

E.   Has not been convicted of engaging in, attempting to engage in or conspiracy to engage in sexual activity facilitated by force, overt or implied threats of force or coercion, or if the victim did not consent or was unable to consent or refuse.

F.   Has not been civilly or administratively adjudicated to have engaged in the activity described in Number E. above.

G.   The MDOC may investigate the Contractor/subcontractor's personnel before they may have access to MDOC facilities and systems. The scope of the background check is at the discretion of the MDOC and the results will be used to determine Contractor/Subcontractor's personnel eligibility for working within MDOC facilities and systems. The investigations will include Michigan State Police Background checks (ICHAT) and the Law Enforcement Information Network (LEIN) and may include the National Crime Information Center (NCIC). Proposed Contractor/subcontractor personnel may be required to complete and submit an RI-8 Fingerprint Card for the NCIC Fingerprint Check. Any request for background checks will be initiated by the MDOC and will be reasonably related to the type of work requested.

H.   The Contractor/subcontractor's personnel must be LEIN cleared and received written approval from the MDOC's Program Manager and Contract Manager initially and annually by MDOC prior to any work with MDOC offenders. Any Contractor/subcontractor staff with an identified felony conviction must receive approval through the MDOC Deputy Director or designee.

I.   A completed LEIN Information Form for each staff assigned to the contract must be sent to the MDOC-PMCD-FOA-LEINS@michigan.gov and approved by MDOC prior to Contractor/subcontractor's personnel working with MDOC offenders and annually following approval. There is no cost associated with the LEIN. The LEIN form will be provided to the Contract awardee(s).

J.   The Contractor/subcontractor must document if a Contractor/subcontractor's personnel assigned to the Contract is related to or acquainted with an offender incarcerated and under the jurisdiction of the MDOC. For Contractor/subcontractor's personnel who are related to or acquainted with an offender, the Contractor/subcontractor's staff member must complete the Offender Contact Exception Request (CAJ-202) and submit it to the MDOC Program Manager or designee. The Contractor must ensure its personnel and subcontractor's personnel complete the form and notify the MDOC Program Manager of any changes throughout the contract term.

K.   The Contractor/subcontractor's personnel will be required to enter State facilities. The State may require the Contractor/subcontractor's personnel to wear State-issued identification badges.

L.   The Contractor/subcontractor's personnel must anticipate delays when visiting any correctional facility due to issues within the facility.

M.   The Contractor/subcontractor's personnel must comply with the State's security and acceptable use policies for State IT equipment and resources. See http://www.michigan.gov/dtmb/0,4568,7-150-56355_56579_56755---,00.html. Contractor/subcontractor personnel must also agree to the State's security and acceptable use policies before the Contractor/subcontractor personnel will be accepted as a resource to perform work for the State. The Contractor must present these documents to prospective Contractor/subcontractor personnel before the Contractor/subcontractor presents the individual to the State as a proposed resource. Contractor/subcontractor personnel must comply with all physical security procedures in place within the facilities where they are working.

N.   The MDOC reserves the right to deny access to any correctional facility to anyone who fails to comply with any applicable State, Federal, or local law, ordinance or regulation or whose presence may compromise the security of the facility, its offenders, or staff. Weapons, alcoholic beverages, poison, and prescription drugs and controlled substances without written certification of needs from a licensed physician (does not include medical supplies for the facility), cellular devices, cameras, and audio or visual recording devices are prohibited from being brought into all MDOC correctional facilities. Tobacco products and smoking also are prohibited both inside a correctional facility and on facility grounds except as specifically authorized by MDOC policy. Wardens may prohibit other items from being brought into their respective correctional facilities.

O.   Security is the facility's first priority and the Contractor/subcontractor and its personnel must be responsive and respectful of these needs.

P.   The Contractor/subcontractor and its personnel must comply with and cooperate with all correctional facility rules, procedures and processes as well as State and federal laws. Contractor/subcontractor personnel must ensure that they are complying with all facility rules and regulations including, but not limited to, dress code and items allowed to be possessed.

Q.   The Contractor/subcontractor personnel must follow the facility entry, exit, manifest process, including the following:

1. The Contractor/subcontractor personnel will receive an orientation and training by the MDOC on security, procedures, etc., inside the correctional facility. The Contractor must maintain a copy of the Contractor/subcontractor personnel's training certificates in the appropriate file for auditing purposes.

2. The Contractor/subcontractor personnel must follow all MDOC rules, procedures and security processes at all times.

3. The Contractor must ensure that all Contractor/subcontractor personnel working in a correctional facility are familiar and in compliance with the necessary routines and increased awareness of working inside a facility. Working inside the facility requires that the Contractor/subcontractor personnel develop positive and cooperative relationships with MDOC facility staff.

4. The Contractor/subcontractor personnel must report any concerns, issues, or rule violations to the MDOC facility staff immediately.

5. The Contractor/subcontractor personnel must use the MDOC facility staff as a resource for questions and guidance working with prisoners and inside a correctional facility.

6. The Contractor/subcontractor personnel must defer to MDOC correctional facility staff for directions. The Contractor/subcontractor personnel must remember they are a guest in the facility and that security is the first priority of the facility.

Vendor Handbook

- The Contractor will require all its employees working inside an MDOC correctional facility to read and sign the MDOC Vendor Handbook upon award of Contract. The purpose of the MDOC Vendor Handbook is to provide the Contractor with general information regarding basic requirements of working within the MDOC, provide notice of work rules, and consequences of rule violations. The awarded Contractor must provide copies of each signed Employee Acknowledgement to the MDOC Program Manager at the completion of the employee's orientation.

4) Schedule B, Pricing:
Revise the Shipping Cost to include: $6,000 total shipping cost for up to 2000 devices

5) Terms and Conditions:
Add Invoicing language below to section 12. Invoices and Payment:
1. The Contractor will submit properly itemized invoices for completed and accepted work only to:

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

DTMB-Accounts-Payable@michigan.gov

2. Invoices must provide and itemize, as applicable:

    a. Contract number
    b. Delivery order number
    c. Contractor name, address, phone number, and Federal Tax Identification Number.
    d. Description of deliverables completed
    e. Date(s) of delivery and/or date(s) of installation and setup
    f. Price for each item
    h. Net invoice price for each item
    i. Shipping costs, if applicable.
    j. Every three months, the LOA Analysis will be submitted with the Monthly Managed Services charge state.
    k. Total invoice price

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

Hardware Schedule

1.   Definitions. All initial capitalized terms in this Schedule that are not defined herein shall have the respective meanings given to them in the Contract. For the purposes of this Schedule, the following term has the following meaning:

a.   **"Hardware"** means all hardware required to be supplied by Contractor, including but not limited to all Chromebooks and accessories, and IT system hardware.

2.   Hardware. Contractor must provide fully functioning Hardware that fully integrates with the Software.

3.   Delivery. Contractor must deliver the Hardware to the locations designated by the State by the delivery date specified in the Statement of Work. Five days prior to the actual delivery date, Contractor must give written notice to the State specifying the precise delivery date and time. Contractor must pay all costs associated with replacing any item damaged in transit to the final destination. Contractor acknowledges that no item will be considered delivered on the delivery date if it is damaged or otherwise not ready for the State to begin its acceptance procedures. Contractor must, at a minimum, package the Hardware according to industry standards and include a packing slip with each shipment. Contractor must also arrange for any rigging and drayage necessary to deliver the Hardware. All costs associated with packaging, shipping, transportation, delivery and insurance are to be borne by Contractor.

4.   Installation, Integration and Configuration.

a.   Contractor must unpack, assemble, install, integrate, interconnect, and configure all the Hardware at the locations specified in the Statement of Work. Where necessary to complete installation, Contractor must provide all required moving and installation resources, including but not limited to personnel, packing material, and floor protection panels as necessary. After completing installation, Contractor must provide the State with written notification that the Hardware is ready for use.

b.   Contractor must supply all materials required to complete the assembly, installation, integration, interconnection, and configuration of the Hardware at the locations specified in the Statement of Work so that they are ready for use and acceptance, including providing and setting up all required connections to the power supply and any other necessary cables and any other accessories or supplies.

c.   Contractor must leave all work areas clean once installation is complete, which includes removing and disposing of all packing materials.

d.   Unless otherwise provided for in the Pricing Schedule, all costs associated with the installation services described in this Section are to be borne by Contractor.

5.   Documentation. Contractor must provide to the State all end-user documentation for the Hardware. The documentation, at a minimum, must include all the documentation available to consumers from the manufacturer of the Hardware about the technical specifications of the Hardware, installation requirements, and operating instructions, as well as details about the software programs with which the Hardware functions.

6.   Acceptance. The section applies generally to the acceptance of Hardware but is subject to the more specific testing and acceptance, if any, in the Statement of Work if the Hardware being tested is part of the testing process involving Software.

a.   The Hardware is subject to inspection and acceptance by the State. As part of its acceptance process, the State may test any function of the Hardware to determine whether they meet the requirements set forth in the Statement of Work. If the Hardware does not meet the requirements set forth in the Statement of Work, the State may reject the Hardware or require that they be corrected at Contractor's sole cost and expense before accepting them.

b.   Acceptance by the State does not relieve Contractor of its responsibility for defects in the Hardware or other failures to meet the requirements of the Statement of Work or of its support and maintenance obligations.

c.   Unless otherwise specified in the Statement of Work, the procedure for acceptance will be as stated in the Contract for non-Software deliverables.

7.   Support and Warranty for Hardware.

a.   Contractor will provide maintenance and support of the Hardware includes a period of one-year from the date of order

b.   Contractor will provide and assign or otherwise transfer to the State or its designee and manufacturer's warranties regarding all Hardware or as otherwise provided for in the Contract.

8.   Hardware Further Representations and Warranties. Contractor represents and warrants that:

a.   all Hardware is delivered free from any security interest, lien, or encumbrance and will continue in that respect;

b.   the Hardware will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party;

9.   Risk of Loss and Title. Until final acceptance, title and risk of loss or damage to Hardware remains with Contractor. Contractor is responsible for filing, processing, and collecting all damage claims. The State will record and report to Contractor any evidence of visible damage. If the State rejects the Hardware, Contractor must remove them from the premises within 10 calendar days after notification of rejection. The risk of loss of rejected or non-conforming Hardware remains with Contractor. Rejected Hardware not removed by Contractor within 10 calendar days will be deemed abandoned by Contractor, and the State will have the right to dispose of it as its own property. Contractor must reimburse the State for costs and expenses incurred in storing or effecting removal or disposition of rejected Hardware. Title passes to the State upon final acceptance of the Hardware.

STATE OF MICHIGAN PROCUREMENT

525 W. Allegan, Lansing, MI 48933

P.O. Box 30026 Lansing, MI 48909

NOTICE OF CONTRACT

NOTICE OF CONTRACT NO. **220000000203**

between

THE STATE OF MICHIGAN

and

CONTRACTOR	
Resultant	
115 W. Allegan St., Suite 430	
Lansing, MI 48909	
Ashleigh Greene	
586-612-5535	
agreene@resultant.com	
VS0153211	

STATE			
Program Manager	Heather Gay	MDOC
	517-243-4762	
	gayh@michigan.gov	
Contract Administrator	Jarrod Barron	DTMB
	517-243-8459	
	Barronj1@michigan.gov	

CONTRACT SUMMARY

DESCRIPTION: MDOC Learning Management System

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
12/16/2021	12/15/2026	10, 1-year	

PAYMENT TERMS	DELIVERY TIMEFRAME
Net 45	

ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
☐ P-card	☐ Payment Request (PRC)	☐ Other	☒ Yes	☐ No

MINIMUM DELIVERY REQUIREMENTS

MISCELLANEOUS INFORMATION

ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION	$11,158,651.00

FOR THE CONTRACTOR:

_____
Company Name

_____
Authorized Agent Signature

_____
Authorized Agent (Print or Type)

_____
Date

FOR THE STATE:

_____
Signature

_____
Name & Title

_____
Agency

_____
Date

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 Resultant ("**Contractor**"). This Contract is effective on December 16, 2021 ("**Effective Date**"), and unless terminated, will expire on December 15, 2026 (the "**Term**").

This Contract may be renewed for up to 10 additional 1-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, CPC 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 if 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.

1.1   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.

1.2   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.

1.3 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.

1.4 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.

1.5   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 **Subsection 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.

1.6   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.

2.   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 Contractor:
Attn: Legal 111 Monument Circle, Suite 202 Indianapolis, Indiana 46204 Contracts@resultant.com (765)586-0730

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

4.   Software License.

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

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

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

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

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

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

4.2   **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 5.2(c)** below.

(b) <u>License Restrictions</u>. 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) <u>Use</u>. 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.

4.3 **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.

4.4 **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.

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

6. **Intellectual Property Rights**

6.1 <u>Ownership Rights in Software</u>

(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.

6.2 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.

7. **Software Implementation**.

7.1 <u>Implementation</u>. 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.

7.2 <u>Site Preparation</u>. 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.

8. **Software Acceptance Testing**.

8.1 <u>Acceptance Testing</u>.

(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.

8.2   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.

8.3   <u>Notices of Completion, Non-Conformities, and Acceptance</u>. 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.

8.4   <u>Failure of Acceptance Tests</u>. 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.

8.5   <u>Repeated Failure of Acceptance Tests</u>. 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**.

8.6   <u>Acceptance</u>. 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)**.

9.   Non-Software Acceptance.

9.1   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.

9.2   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.

9.3   If Contractor is unable or refuses to correct the deficiency within the time response standards set forth in this Contract or such timeframes as otherwise agreed to in writing by the Parties, 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.

10.   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.

11.   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.

12. Invoices and Payment.

12.1   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.

12.2   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.

12.3   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.

12.4   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.

12.5   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.

12.6   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 published 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.

13. Liquidated Damages.

13.1   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.

13.2   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.

13.3   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.

13.4   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.

14. 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.

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

15.1   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.

15.2   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.

15.3   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.

16. Indemnification

16.1 <u>General Indemnification</u>. 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).

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

    (a) regular updates on proceeding status;

    (b) participate in the defense of the proceeding;

    (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.

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

17. Infringement Remedies.

17.1 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.

17.2 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.

17.3   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.

17.4   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.

18. Disclaimer of Damages and Limitation of Liability.

18.1   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.

18.2   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.

19. 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.

20. State Data.

20.1   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.

20.2   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.

1.1   Contractor Use of State Data. The Parties agree that provision of the Software and Services does not require the State to provide row-level, identified, and sensitive/protected State Data to Contractor. The Parties further agree that row-level, identified, and sensitive/protected State Data, including PII and PHI, will not be provided to Contractor unless the Parties agree in writing that said State Data must be made viewable to Contractor in order for Contractor to complete its duties under this Contract. In the event that the Parties agree in writing that row-level, identified, and sensitive/protected State Data must be viewable to Contractor in order for Contractor to complete its duties under this Contract, said State Data shall not be transmitted to Contractor and shall at all times be hosted by the State. The Parties agree that Contractor shall not be provided row-level, identified, and sensitive/protected State Data to host in Contractor's environments. Further, in the event that the Parties agree in writing that State Data must be viewable to Contractor in order for Contractor to complete its duties under this Contract, the following provisions set forth in this Section 20.3, as well as Sections 20.4, 20.5, and 20.6 apply.

20.3   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.

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

responses. Contractor agrees to provide its completed responses to the State with adequate time for State review, revision and approval.

20.5   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.

20.6   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.

21. 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.

21.1   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.

21.2   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**.

21.3   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.

21.4 <u>Remedies for Breach of Obligation of Confidentiality</u>. 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.

21.5 <u>Surrender of Confidential Information upon Termination</u>. 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.

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

22.1 <u>Right of Audit</u>. 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.

22.2 <u>Right of Inspection</u>. 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.

22.3 <u>Application</u>. This **Section 23** applies to Contractor, any Affiliate, and any Permitted Subcontractor that performs Services in connection with this Contract.

23. <u>Support Services</u>. 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 in accordance with the Statement of Work:

  (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.

24. <u>Data Security Requirements</u>. 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.

25. Maintenance Releases; New Versions

25.1   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.

25.2   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.

25.3   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 Acceptance Tested by the State. The State's decision not to install or implement a Maintenance Release or New Version of the Software will not affect its right to receive Support Services throughout the Term of this Contract.

26. Source Code Escrow

26.1   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.

26.2   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.

26.3   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.

26.4   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).

27. Contractor Representations and Warranties.

27.1   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.

27.2   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 CPC; 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.

27.3   Software Representations and Warranties. Software representations and warranties are set forth in the Google Terms of Services, and other terms of service as set forth in the Statement of Work. To the extent consistent with those representations and warranties, Contractor 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; or an authorized reseller of the Software;

(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.

27.4   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.

28. 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.

29. 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.

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

31. 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.

32. 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.

33. 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.

34. 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.

35. Force Majeure

35.1   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.

35.2   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.

35.3   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.

36. 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.

37. 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.

38. 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.

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

40. 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.

41. 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.

42. 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.

42.1   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.

42.2   If extended, Contractor must provide a copy of the Statement of Work entered into by the MiDEAL member and Contractor that details the Services, Deliverables, prices, and terms for the purchase by the MiDEAL member. The State will impose an administrative fee of one (1) percent on such purchases

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

43. 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.

44. 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.

45. Accessibility Requirements.

45.1   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.

45.2 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.

45.3 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**.

45.4 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

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

46. 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.

47. 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.

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

49. 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.

50. 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.

51. 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.

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

Schedule A	Statement of Work
Schedule B	Pricing Schedule
Schedule C	Insurance Schedule
Schedule D	Service Level Agreement
Schedule E	Data Security Requirements
Schedule G	Federal Provisions Addendum
Schedule H – Attachment 1	Byrd Anti-Lobbying Certification

53. 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.

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. BACKGROUND

PURPOSE

This Contract is to upgrade the Statewide LMS to a more robust, web-based solution with the ability to scale. Resultant has completed a no-cost pilot program that enabled MDOC to test drive the solution. Resultant's solution is designed to operate on Google's web-based, scalable, cloud platform by combining Google Chromebooks, Google Classroom, and consulting services from our Google Certified solution engineers.

Google Workspace Software
1. Google Workspace Replacement Software 2. Google Keep 3. Google Media Player (includes access to YouTube) 4. Grow with Google (more robust than MDL) 5. Google Docs Resume Templates 6. Google Docs, Sheets and Slides (this will enable MDOC to eliminate all 600 Microsoft licenses which reach end of life in April 2023)

Program Overview

The Michigan Department of Corrections (MDOC) provides educational services to approximately 7,500 offenders at 29 prison facilities around the State of Michigan and 1 facility at our DTMB Agency Services headquarters. The mission of the MDOC Prisoner Education system is to facilitate the transition from prison to the community by assisting prisoners in the development of their academic, workplace, and social competencies through effective and cost-efficient programs. Programs offered include Academic (GED and HiSet), Career and Technical Education (CTE), including state and national credentials, Employment Readiness, Special Education, Title I programming, and Postsecondary classes.

2. DEPLOYMENT

Resultant is offering the consulting services below delivered by our Google certified trainers and solution engineers. We understand that we will need to work collaboratively with MDOC and DTMB to successfully configure the solution.

Resultant will configure and configure a home screen on each device that includes the MDOC education links below and compatible Google Workspace applications so participants will have a seamless learning experience.

- Aztec
- Boardworks
- CareerScope

- Easy IEP
- Pearson VUE GED Apps
- NCCER

- Rapid Typing
- STS Examiner
- TABE Online

MDOC can keep their existing LMS software as desired. If they are web enabled, they will work on Chromebooks. However, the following LMS software solutions can be replaced with Google solutions that perform similar tasks.

MDOC LMS Software	Google Workspace Replacement Software

1. MDOC LMS Software 2. Electronic/Digital Notepad 3. Media Player 4. Microsoft Digital Literacy 5. Winway Resume Maker 6. Office 2013 (Word, Excel PowerPoint)	1. Google Workspace Replacement Software 2. Google Keep 3. Google Media Player (includes access to YouTube) 4. Grow with Google (more robust than MDL) 5. Google Docs Resume Templates 6. Google Docs, Sheets and Slides (this will enable MODC to eliminate all 600 Microsoft licenses which reach end of life in April 2023)

All Google Workspace replacement software above is included with our solution at no additional cost.

Domain Provisioning, Setup & Configuration

Resultant will setup and configure the Google domain and enable the various services for use once domain ownership is verified. These services include mail, contacts, chat, drive, docs, sites, groups, hangouts, and Google Classroom. Adding and removing access to each application can vary as desired by MDOC.

Whitelisting – Resultant and MDOC will work through the existing whitelisted items and ensure the list is inclusive of every tool required for use. Ongoing maintenance of the whitelist past deployment will be covered under the managed services portion of this agreement.

Google Vault Setup & Configuration

Resultant will setup, configure, test, and deploy Google Vault in the MDOC environment. To deploy Vault, a registered domain with service and ownership verification is required. We will setup and configure the service to enable data to be retained and archived in Google Vault.

User Provisioning

Resultant will provision and configure user accounts in the MDOC domain. We will leverage a series of in-house and open source scripts to ensure users are properly provisioned. We will instruct MDOC's IT administrators on how to run these scripts.

Google Groups Provisioning

Resultant will provision and configure Google Groups accounts in the MDOC domain. We will leverage a series of in-house and open-source scripts to ensure groups and shared contacts are properly provisioned. We will instruct MDOC's administrators on how to run these scripts in the domain.

Interoperability with Google Applications and Microsoft Office

In 2012, Google acquired QuickOffice, a purpose-built tool that enables users to seamlessly open/view/edit Microsoft artifacts in Google without manual intervention or the need to convert the files. These features have been incorporated into Google Workspace/Classroom and work automatically out of the box. It has been eight years since Google integrated these backwards compatible features into their solution and their interoperability story only becomes stronger every year.

Administrative Control Panel Security Review & Recommendations

Resultant will conduct a detailed Security Review with MDOC to ensure the appropriate security controls are enabled in the Google domain. We will review the Administrative Control Panel with MDOC and provide a detailed Domain Configuration Checklist. We will provide recommendations and best practices for basic settings, advanced settings, password monitoring, APIs, SSO, mobile device management (MDM), SSL, security, privacy, and sharing (where applicable).

Google Workspace and Google Classroom Training, Planning & Scheduling

Resultant will plan, schedule and conduct Google Workspace and Google Classroom training in Virtual Instructor Led Training (VILT) webinar format. We will deliver ongoing training classes virtually. The level of effort includes the creation of presentation slides for training, scheduling, setup, and deconstruction of the training environment, time to schedule each class, and any preparation time the instructor will require to successfully conduct the class. The following section describes the training classes and approach Resultant will leverage to deliver training. Dates, times, and number of classes will be mutually determined between Resultant and MDOC.

Class Name & Description
a. Google Mail (Gmail) This class consists of an overview of the Gmail interface; navigation; composing messages; conversation threads; message organization with Stars, Labels, and Filters; basic and advanced searches; contacts; chat; and a detailed review of the Settings menu.
b. Introduction to Google Drive & Shared Drives This class is designed to provide new Google users with an overview of Google Drive and Shared Drives including creating and organizing documents and folders, uploading existing artifacts to Drive, two way conversion, shared folders and Shared Drives, permissions, home pages, interoperability with Microsoft artifacts, and basic workflow in the activity list.

c. Administering Google Workspace & Google Classroom

This class is targeted for IT administrators and technical staff. It consists of how to use the Google Workspace and Vault Control Panels, an overview of each Control Panel, domain settings, security, troubleshooting techniques, FAQs, workarounds, best practices, tools, and more.

d. Supporting Google Workspace & Google Classroom

This class consists of an overview of common user questions and resolutions, the Google Workspace Status Dashboard, Help Desk resources, troubleshooting tips, basic errors, discussion groups, best practices, logging tickets, and more.

e. Google Classroom

This class consists of how to utilize Google Classroom in Google Workspace in either a training setting or as an LMS. It includes an overview of how individuals will interact with Classroom to create training sessions (classes), add individuals, add and manage assignments in Classroom and in Drive, create announcements, topics, and more. As part of the POC, Resultant will develop training artifacts including a Training & Professional Development (PD) Guide for MDOC's educators.

Providing Google Cloud Training for 2 Admins

Fundamentals: Core Infrastructure

Fundamentals: Big Data and ML

Google Cloud Networking

Intro to Google Cloud Security

Intro to BigQuery

Project Management
Resultant will provide a Project Manager to ensure project activities are tracked and managed successfully throughout the project. The Resultant Project Manager will work alongside MDOC's Project Manager to coordinate POC activities and ensure timelines and deliverables are met. Together, the Project Management Team is required as key resources during the POC. Resultant's Project Manager has extensive experience with enterprise Google Workspace and Google Classroom implementations, managing end-to-end enterprise projects, as well as expertise in numerous Project Management methodologies. Resultant will use our proprietary Google Workspace project management methodology together with SmartSheets to plan, track, and manage project tasks.

Landing Page Development

The Resultant development team will design and implement a landing page to serve as the home screen for student's access for educational content. The site can be maintained under the managed services portion of this agreement including small changes to the icons and listed items. Any redesign efforts will be a scope change and Resultant will submit pricing accordingly.

Alternate MFA

Resultant will update, configure and apply a custom designed alternate MFA application to by-pass the Google default MFA process for students.

Licensing

Resultant will provide Google Enterprise Licensing for the following. Additional licenses are available at any time

       Students – 15,000

       Teachers – 200

       Admins – 40

Google's GCP and Workspace EULAs currently in place with the state are applicable. https://static.carahsoft.com/concrete/files/8816/2402/1253/Master_Cloud_Workspace_TOS_621.pdf

Licensing for a Citrix VDI is applicable to operate PearsonVUE. Software EULAs for Citrix are applicable: https://www.citrix.com/buy/licensing/agreements.html

Hardware

Resultant will provide 2,500 Dell Latitude 5400 Chromebooks with ethernet ports and clear rubberized cases custom fit to the device. Chromebooks will arrive enrollment in the appropriate OU with the perpetual Chrome enterprise license included. A hardware refresh is expected every 3 years to maintain the chrome licenses which is required for security. Hardware costs may differ after the initial purchase based on manufacturer pricing. Resultant will work with the manufacturer to negotiate the best pricing available based on required quantities. Should MDOC no longer require ethernet ports in devices, Resultant will spec an alternate comparable device to meet the needs of this scope for future device purchases.

Managed Services

MDOC requires PearsonVUE for GED Testing. PearsonVUE will require a solution to operate on a Chromebook. Resultant will provide the annual licensing (as prices in the proposal) and custom developed environment to successfully operate PearsonVUE GED Testing on the new platform.

Resultant will provide Tier 2-3 support to MDOC for this solution. Pricing is based on 15,000 students and 40 admins as follows:

- Connection Servers, identity provider, and GCP platform
- User Support up to 240 tickets per month
- Chromebook support up to 240 tickets per month
- Provisioning/Deprovisioning students in batches (twice per month) up to 400 accounts in/out per month

Any additional custom development work leveraging Google or Chrome experts internally may be an additional cost to MDOC.

Resultant assumes a monthly 5% band on user and device support. Transition timeline doesn't account for SLA's and band. 90 day level of effort analysis and pricing review for the first 12 months, 180 days in following years.

Communication Channels

To streamline communication, eliminate confusion, and foster end user organization, you will be assigned a Resultant Team Lead who serves as the primary point of contact from Resultant, in addition to the Helpdesk. You will select primary and secondary points of communication from within your organization to work directly with your Team Lead and serve as the voices for the engagement. This efficient and simple access allows for quick client onboarding without requiring formalized training programs for Resultant clients.

Helpdesk

Resultant will work to proactively inform you about potential issues within specific areas of the IT environment
before issues are realized. This will include analysis, tracking, and corrective action for functionality issues such as error logs, disk spaces, and battery backup reliability. However, when issues are realized, or end users have needs to be addressed, Resultant will provide managed services clients with a consistent and efficient means of support through the Resultant Helpdesk.

The Helpdesk center is available to route clients' day-to-day support issues. The Helpdesk may be reached by phone, email, or through the ConnectWise dashboard. The Helpdesk email address is constantly monitored. When calling the Helpdesk, there will be a live answer during our normal business hours of 8 a.m. to 5 p.m., Monday through Friday. After-hours support is also available by contacting the Helpdesk, triggering a response from the on-call technicians

3. 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.

4.   USER TYPE AND CAPACITY

Type of User	Access Type	Number of Users	Number of Concurrent Users
Michigan Department of Corrections Inmates	Restricted	15,000 (additional licenses available at any time at a cost)	15,000 (additional licenses available at any time at a cost)
State Employee (includes administrators and educators)	Full - limited access	240 ((additional licenses available at any time at a cost)	240 (additional licenses available at any time at a cost)
Approved Third Party	Super Admin - Admin	5	5

Contractor Solution must meet the expected number of concurrent Users. Contractor's solution is also scalable, at additional costs.

5.   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.

6.   DATA RETENTION AND REMOVAL

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

7.   END USER AND IT 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 running in house and in cloud hosting provides.

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.

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

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

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.

SOM IT Environment Access
Contractor must access State environments using one or more of the following methods:

*   State provided VDI (Virtual Desktop Infrastructure).
*   State provided and managed workstation device.
*   Contractor owned and managed workstation maintained to all State policies and standards.
*   Contractor required interface with State systems which must be maintained incompliance with State policies and standards as set forth in **Schedule E – Data Security Requirements**.

If software is installed in the future, the deployment process identified in the Statement of Work must be followed.
*   If additional Chromebooks are added to the scope of work, a change notice to the contract will include pricing based on manufacturer pricing at that time. Device enrollment and provisioning will occur at our depot at current pricing and devices will be shipped directly to the end-user location at the customers expense.
*   Enrollment of any users over the initial deployment of 15,000 student licenses, 200 teacher licenses or 40 administrator licenses are subject to licensing and deployment costs. Resultant will also analyze the Managed Services portion of the original agreement and work with the client to scale if necessary to ensure best in class service is provided for the expanded scope.

- Should the client require an additional VDI in the future, Resultant will negotiate the best possible licensing rate to stand up and configure an additional environment, testing and deployment.

9. TRAINING SERVICES

The Contractor must provide administration and end-user training for implementation, go-live support, and transition to customer self-sufficiency. Training is provided during the deployment period to teachers and is included in the deployment cost (outlined in the SOW and pricing doc). Annual in-person teacher training will be conducted, as requested, at an additional cost. Self-led admin training through Google will be provided at no cost. Resultant is also managing the deployed solution at a cost and as outlined in the SOW and pricing.

10. 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.

11. CONTRACTOR PERSONNEL

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

Contractor
Name: Ashleigh Greene
Address: 111 Monument Circle, Suite 202, Indianapolis, IN 46204
Phone: 586-612-5535
Email: agreene@resultant.com

12. 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: Jeremy Kearns
Address: 111 Monument Circle, Suite 202, Indianapolis, IN 46204
Phone: 702-491-1592
Email: jkearns@resultant.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: Mark Gomez
Address: 111 Monument Circle, Suite 202, Indianapolis, IN 46204
Phone: 303-396-2372
Email: mgomez@resultant.com

13. 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) Finger Prints, if required by project.

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

Offshore Resources.
Contractor must disclose offshore resources to the State via email, if required for this project.

14. 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: Jarrod Barron **Phone: 517-249-0406** **Email: Barronj1@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: Dave Enslin **Phone: (517) 930-6332** **Email: Enslind@michigan.gov**

Agency Program Manager
Name: Heather Gay **Phone: 517-243-4762** **Email: gayh@michigan.gov**

15. 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.

The Contractor must attend the following meetings, at a location and time as identified by the state, at no additional cost to the State:
- Project Kick-off
- Weekly implementation touchpoints

16. 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.

17. 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	Associated Milestone Deliverable(s)	Schedule
Project Planning	Project Kickoff	Contract Execution + 10 calendar days
Requirements and Design Validation	Validation sessions, Final Requirement Validation Document, Final Design Document, Final Implementation Document	Execution + 90 calendar days
Provision environments	Validate Test and Production environments	Execution + 90 calendar days
Installation and Configuration of software	Final Solution and Testing Document	Execution + 120 calendar days
Testing and Acceptance	Final Test Results Report, Final Training Documentation, Final Acceptance	Execution+150 calendar days
Post Production Warranty	Included in the cost of Solution.	Production + 90 calendar days
Production Support Services	Ongoing after Final Acceptance.	Ongoing

18. ADDITONAL INFORMATION

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

	YEAR 1		

Deployment Description	Hours	Rate	Total
Technical Services			
i. Domain Provisioning, Setup & Configuration (Google Workspace, Chrome Management Console, Chrome Browser Settings)	253	$175	$44,275
ii. Data Retention Setup & Configuration	16	$175	$2,800
iii. User Provisioning (40 hours per 7,500 users)	80	$175	$14,000
iv. Google Groups Provisioning	40	$175	$7,000
Training & Change Management			
i. Change Management - Meetings & Templates	60	$175	$10,500
ii. Introduction to Google Drive & Shared Drives (4 Class) in VILT format via webinar	6	$175	$1,050
iii. Administering Workspace (1 Class) in VILT format via webinar	2	$175	$350
iv. Working With Google Classroom (16 immersive sessions)	32	$175	$5,600
Landing Page Development	20	$175	$3,500
Alternate MFA	48	$175	$8,400
Project Management	240	$175	$42,000
DTMB Security Testing Support	300	$175	$52,500
Deployment Support (1st month)	40	$175	$7,000
Subtotal	**1137**		**$198,975**
GOOGLE DEPLOYMENT CREDIT - Google Workspace - only valid if purchased prior to 12/17/2021			-$200,000
GOOGLE DEPLOYMENT CREDIT - Chrome			-$25,000
Total			**-$26,025**

Annual License Costs	QTY	MSRP	Annual
Google Enterprise (Students)	15,000	$81.02	$1,215,360.00
Google Enterprise (Teachers)	200	$201.60	$40,320.00
Google Enterprise (Admin)	40	$201.60	$8,064.00
Total			**$1,263,744.00**
*First Year Free - **only valid if purchased prior to 12/17/2021***			-
			$1,263,744.00
Year 1, Google Workspace Licenses			**$0.00**

Hardware Costs - Hardware Refresh every 3 years	QTY	MSRP	Total
Dell	2,500	$714.15	$1,785,375.00
Case - Gumdrop Rubberized Case	2,500	$39.95	$99,875.00
Enrollment - Shipping/Carrier charges TBD in addition to this total	2,500	$27.00	$67,500.00
Total (plus s/h & local taxes)			**$1,952,750.00**

Managed Services	QTY	$/month	Annual
PearsonVUE Delivery			
Citrix	1	$38,586	$38,586
GCP Environment (12 month term)	1	$30,894	$30,894
Development	1	$30,000	$30,000
Monthly Manged Services for 15,000 students, 200 teachers, 40 admins	12	$30,780	$369,360
VDI platform, Connection Servers, Identity Provider, GCP Platform			
User Support (240 tickets per month)			
Chromebook Support (240 tickets per month)			
Provisioning/Deprovisioning Students (In/Out 400 per month)			
Asumptions*: 5% bands on user and device support. Transition timeline doesn't count for SLA's and band. 90 day LOE analysis & pricing review*			
Managed Services Total:			**$468,840**

Year 1 Total:			**$2,395,565**

YEAR 2			

Annual License Costs	QTY	MSRP	Annual
Google Enterprise (Students)	15,000	$81.02	$1,215,360.00
Google Enterprise (Teachers)	200	$201.60	$40,320.00
Google Enterprise (Admin)	40	$201.60	$8,064.00
Total			**$1,263,744.00**

Managed Services	QTY	$/month	Annual
PearsonVUE Delivery			
Citrix	1	$38,586	$38,586
GCP Environment (12 month term)	1	$30,894	$30,894
Monthly Manged Services for 15,000 students, 200 teachers, 40 admins	12	$30,780	$369,360
VDI platform, Connection Servers, Identity Provider, GCP Platform			
User Support (240 tickets per month)			
Chromebook Support (240 tickets per month)			
Provisioning/Deprovisioning Students (In/Out 400 per month)			
Asumptions*: 5% bands on user and device support. Transition timeline doesn't count for SLA's and band. 180 day LOE analysis & pricing review*			
Managed Services Total:			**$438,840**

Year 2 Total:			**$1,702,584**

		YEAR 3		

Annual License Costs	QTY	MSRP	Annual
Google Enterprise (Students)	15,000	$81.02	$1,215,360.00
Google Enterprise (Teachers)	200	$201.60	$40,320.00
Google Enterprise (Admin)	40	$201.60	$8,064.00
Total			**$1,263,744.00**

Managed Services	QTY	$/month	Annual
PearsonVUE Delivery			
Citrix	1	$38,586	$38,586
GCP Environment (12 month term)	1	$30,894	$30,894
Monthly Manged Services for 15,000 students, 200 teachers, 40 admins	12	$30,780	$369,360
VDI platform, Connection Servers, Identity Provider, GCP Platform			
User Support (240 tickets per month)			
Chromebook Support (240 tickets per month)			
Provisioning/Deprovisioning Students (In/Out 400 per month)			
***Asumptions**: 5% bands on user and device support. Transition timeline doesn't count for SLA's and band. 180 day LOE analysis & pricing review*			
Managed Services Total:			**$438,840**

Year 3 Total:		**$1,702,584**

Annual License Costs	QTY	MSRP	Annual
Google Enterprise (Students)	15,000	$81.02	$1,215,360.00
Google Enterprise (Teachers)	200	$201.60	$40,320.00
Google Enterprise (Admin)	40	$201.60	$8,064.00
Total			**$1,263,744.00**

Hardware Costs - Hardware Refresh every 3 years - Estimated price based on 2021 value. Revised hardware refresh pricing will be submitted at start of year 4	QTY	MSRP	Total
Dell - Estimated price based on 2021 value. Revised hardware refresh pricing will be submitted at start of year 4	2,500	$714.15	$1,785,375.00
Case - Gumdrop Rubberized Case - estimated price based on 2021 pricing	2,500	$39.95	$99,875.00
Enrollment (estimated based on 2021 pricing) - Shipping/Carrier charges TBD and in addition to this total	2,500	$27.00	$67,500.00
Total (plus s/h & local taxes)			**$1,952,750.00**

Managed Services	QTY	$/month	Annual
PearsonVUE Delivery			
Citrix	1	$38,586	$38,586
GCP Environment (12 month term)	1	$30,894	$30,894
Monthly Manged Services for 15,000 students, 200 teachers, 40 admins	12	$30,780	$369,360
VDI platform, Connection Servers, Identity Provider, GCP Platform			
User Support (240 tickets per month)			
Chromebook Support (240 tickets per month)			
Provisioning/Deprovisioning Students (In/Out 400 per month)			
Asumptions: *5% bands on user and device support. Transition timeline doesn't count for SLA's and band. 180 day LOE analysis & pricing review*			
Managed Services Total:			**$438,840**

Year 4 Total:			**$3,655,334**

YEAR 5			

Annual License Costs	QTY	MSRP	Annual
Google Enterprise (Students)	15,000	$81.02	$1,215,360.00
Google Enterprise (Teachers)	200	$201.60	$40,320.00
Google Enterprise (Admin)	40	$201.60	$8,064.00
Total			**$1,263,744.00**

Managed Services	QTY	$/month	Annual
PearsonVUE Delivery			
Citrix	1	$38,586	$38,586
GCP Environment (12 month term)	1	$30,894	$30,894
Monthly Manged Services for 15,000 students, 200 teachers, 40 admins	12	$30,780	$369,360
VDI platform, Connection Servers, Identity Provider, GCP Platform			
User Support (240 tickets per month)			
Chromebook Support (240 tickets per month)			
Provisioning/Deprovisioning Students (In/Out 400 per month)			
Asumptions: *5% bands on user and device support. Transition timeline doesn't count for SLA's and band. 180 day LOE analysis & pricing review*			
Managed Services Total:			**$438,840**

Year 5 Total:	**$1,702,584**

SCHEDULE C - INSURANCE SCHEDULE

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	
Minimal Limits: $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 Deductible Maximum: $50,000 Each Occurrence	Contractor must have their policy endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 0.
Umbrella or Excess Liability Insurance	
Minimal Limits: $5,000,000 General Aggregate	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.
Automobile Liability Insurance	
Minimal Limits: $1,000,000 Per Occurrence	
Workers' Compensation Insurance	
Minimal Limits: Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
Minimal Limits: $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	Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds; and (2) 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.

<u>Non-waiver</u>. 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).

MDOC may develop further SLA's before the pilot program completion or end of the first contract year and add them through a contract change notice. The SLA's will be based on milestones completions, service errors, service availability, and/or performance of the contract. MDOC may change the below SLA during review of further SLA's.

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

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 Monday-Friday 8:00am-5:00pm EST.

"**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**.

Helpdesk Support

Escalation Process

Resultant utilizes a ticketing system to capture, manage, resolve, and document all IT issues. Tickets are created via the Helpdesk contact procedure (see below) for issues that are discovered through alerts, maintenance, or monitoring activities.

All activity is clearly and concisely documented throughout the ticket resolution process. This procedure not only provides a historical record of customer issues, but also aids the Resultant team in suggesting and implementing proactive infrastructure and IT environment improvements for issues that may be recurring.

Resultant takes a collaborative approach to the resolution of customer IT issues. As appropriate, the customer service team will escalate issues and involve company leadership in selecting the appropriate mitigating actions and reporting on successful closure. The team also participates in conferences calls, either suggested by Resultant or arranged by the company, in order to provide strategic or tactical advice.

Methods to Create a Helpdesk Ticket

Resultant's goal is to react quickly and appropriately to all issues, and to document and communicate effectively both internally and externally throughout the duration of the event. Our customer service teams are encouraged to use good judgement in choosing when and how to contact our customer regarding issues.

Requests can be initiated by the client, or users by calling or emailing our Helpdesk line, discussing an issue with us while onsite, or through portal access to the ticketing system. Issues are documented and tracked in our ticketing system; updates can be reviewed at the client's convenience within their portal account, and they will receive emailed status updates at appropriate junctures throughout the life of the ticket. Our technicians will also communicate and follow up directly with clients as applicable to the situation.

In the event of an issue, we log the event in our ticketing system and begin the resolution process. Communication to appropriate contacts can be set to generate status updates automatically to you when the ticket is updated, escalated, reassigned, etc. Direct communication is utilized as appropriate to the situation and according to the client's designated contacts. Documentation of the issue, actions taken, and resolution are recorded in the ticket through the life of the event and serves as the event report; additional reports can be developed and provided if needed. Clients are notified in all cases at the time of resolution/ticket closure. Resultant constantly evaluates the appropriate levels and frequency of communication in conjunction with client's, adjusting as necessary at any time.

To support Resultant managed services clients, the following resources are provided to contact the Resultant Helpdesk and work through a specific client issue.

Ticketing System	All service issues are put into the ticketing system as a way of tracking and communicating progress as well as for documentation purposes.

Resultant asks that you submit a ticket for service requests to ensure that your issue is queued and handled efficiently. | Portal access or other agreed method. |
| Email | The Helpdesk email address is routed to all consultants and is constantly monitored. If you are unable to submit a ticket through the portal, the email option is an excellent alternative. | help@resultant.com

(mailto:help@resultant.com) |
| Phone | Your company will be assigned a direct-dial Helpdesk phone number. The direct-dial phone number will directly connect you to your service team. The line is manned 8 a.m. to 5 p.m. EST, Monday thru Friday. After hours, a local triage service will collect support information and notify the on-call consultant for a live hand off if needed. | Assigned upon acceptance. |

2. Service Availability and Service Availably 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: (Actual Uptime – Total Minutes in Service Period Hosted Services or Software are not Available Due to an Exception) ÷ (Scheduled Uptime – Total Minutes in Service Period Hosted Services or Software are not Available Due to an Exception) x 100 = 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 reasonably acceptable by both the State and Contractor. . 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

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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 up to 480 tickets per month as indicated in the pricing document and SOW.

(c)   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

(d)   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

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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 <u>Service Maintenance.</u> 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 <u>Support Service Level Requirements.</u> 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 <u>Support Requests.</u> 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	- 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	- Primary component failure that materially impairs its performance; or - Data entry or access is materially impaired on a limited basis.

	• Educational Content whitelisting. • User Account creation.
Medium Service Error	• 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	• Request for assistance, information, or services that are routine in nature.

3.6 <u>Response and Resolution Time Service Levels.</u> 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	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

			the required response time.	thereafter double for each additional one-hour increment.
High Service Error	One (1) hour	Four (4) 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.
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. Contractor must meet or exceed 95% response or resolution of Critical or High Service Errors to avoid credit. 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

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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. Subject to the Google Workspace and Google Cloud T&C as previously accepted by the state. Resultant will work closely with Google to ensure a Recovery Point Objective is as close to the 48 hour threshold as possible.

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

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. 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 programing interface (API).

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

10. Infrastructure Scanning.

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

11. Nonexclusive Remedy for Security Breach.

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

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) <u>Contractor</u>. 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) <u>Subcontracts</u>. 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) <u>Breach</u>. 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) <u>Overtime requirements</u>. 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) <u>Violation; liability for unpaid wages; liquidated damages</u>. 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) <u>Withholding for unpaid wages and liquidated damages.</u> 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) <u>Subcontracts</u>. 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 7401-7671q) and the Federal Water Pollution Control Act (33 USC 1251-1387), and during performance of this Contract the Contractor agrees as follows:

Clean Air Act

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

Federal Water Pollution Control Act

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

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) <u>DHS Seal, Logo, And Flags.</u>
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) <u>Compliance with Federal Law, Regulations, and Executive Orders</u>.
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) <u>No Obligation by Federal Government</u>.
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) <u>Program Fraud and False or Fraudulent Statements or Related Acts</u>.
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.

<u>APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING</u>

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,_____ 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

_____
Name and Title of Contractor's Authorized Official

_____
Date