



# STATE OF MICHIGAN ENTERPRISE PROCUREMENT

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

## CONTRACT CHANGE NOTICE

Change Notice Number **2**  
to  
Contract Number **MA240000001303**

CURRENT CONTRACTOR	Virtual Marketing, LLC dba Fusion92	NEW CONTRACTOR	Virtual Marketing, LLC dba Fusion92
	38505 Country Club Drive, Suite 200		38505 Country Club Drive, Suite 200
	Farmington Hills 22 48331		Farmington Hills MI 48331
	Rebecca Nuno		Rebecca Nuno
	248-489-8300		248-489-8300
	r.nuno@fusion92.com		r.nuno@fusion92.com
	VS0017384		VS0263360

STATE CONTACTS			
Program Manager	Jon Spieles	DNR	Contract Administrator
	517-388-1748		
	spielesj@michigan.gov		
	Marissa Gove	DTMB	
	(517) 449-8952		
	govem1@michigan.gov		

### CONTRACT SUMMARY

Marketing and Advertising Services for Michigan Wildlife Council (MWC) Benefits of Hunting and Fishing Educational Media Campaign

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
December 10, 2024	June 7, 2028	2 - 12 Months	June 7, 2028
PAYMENT TERMS		DELIVERY TIMEFRAME	
NET 45, 1% if paid in 15 days		N/A	
ALTERNATE PAYMENT OPTIONS		EXTENDED PURCHASING	
<input type="checkbox"/> P-Card <input type="checkbox"/> Direct Voucher (PRC) <input type="checkbox"/> Other		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

MINIMUM DELIVERY REQUIREMENTS  
N/A

### DESCRIPTION OF CHANGE NOTICE

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input type="checkbox"/>		

CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE
\$4,200,000.00	\$0.00	\$4,200,000.00

### DESCRIPTION

Effective May 15, 2025, this Contract is updated to reflect the correct vendor number from VS0017384 to VS0263360. All other terms, conditions, specifications and pricing remain the same. Per contractor and agency agreement, and DTMB Central Procurement approval.



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

## CONTRACT CHANGE NOTICE

Change Notice Number 1  
to  
Contract Number MA240000001303

<b>CONTRACTOR</b>	Virtual Marketing, LLC dba Fusion92
	38505 Country Club Drive, Suite 200
	Farmington Hills 22 48331
	Rebecca Nuno
	248-489-8300
	r.nuno@fusion92.com
	VS0017384

<b>STATE</b>	<b>Program Manager</b>	Jon Spieles	DNR
		517-388-1748	
		SPIELESJ@michigan.gov	
	<b>Contract Administrator</b>	Marissa Gove	DTMB
		517-449-8952	
		govem1@michigan.gov	

CONTRACT SUMMARY				
Marketing and Advertising Services for Michigan Wildlife Council (MWC) Benefits of Hunting and Fishing Educational Media Campaign				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE	
December 10, 2024	June 7, 2028	2 - 12 Months	June 7, 2028	
PAYMENT TERMS		DELIVERY TIMEFRAME		
NET 45, 1% if paid in 15 days		N/A		
ALTERNATE PAYMENT OPTIONS		EXTENDED PURCHASING		
<input type="checkbox"/> P-Card <input type="checkbox"/> Direct Voucher (PRC) <input type="checkbox"/> Other		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
MINIMUM DELIVERY REQUIREMENTS				
N/A				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input type="checkbox"/>		
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$4,200,000.00	\$0.00	\$4,200,000.00		
DESCRIPTION				
Effective February 10, 2025, the attached changes are hereby incorporated into this Contract. All other terms, conditions, specifications and pricing remain the same. Per contractor and agency agreement, and DTMB Central Procurement approval.				

1. The Contractor's Program Manager/Account Manager is changed to Samantha Labadie, 313-320-2633, s.labadie@fusion92.com

2. Standard Contract Terms

This STANDARD CONTRACT ("**Contract**") is agreed to between the State of Michigan (the "**State**") and Virtual Marketing, LLC d/b/a Fusion92 ("**Contractor**"), a Delaware limited liability company. This Contract is effective on December 10, 2024 ("Effective Date"), and unless terminated, will expire on June 7, 2028 (the "Term"). December 10, 2024 through June 7, 2025 is the implementation and transition period and no payment will be made to the Contractor during this time; however, the Contractor may utilize limited funds specifically for research purposes only with State approval. The Contractor must begin providing all services without interruption on June 8, 2025.

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

3. Standard Contract Terms, Section 7. Administrative Fee and Reporting and Section 8. Extended Purchasing Program are reserved.



**STATE OF MICHIGAN PROCUREMENT**  
 Department of Technology, Management, and Budget  
 320 South Walnut Street, Lansing, Michigan 48933  
 PO Box 30026, Lansing, Michigan 48909

**NOTICE OF CONTRACT**

NOTICE OF CONTRACT NO. **240000001303**  
 between  
 THE STATE OF MICHIGAN  
 and

<b>CONTRACTOR</b>	Virtual Marketing, LLC dba Fusion92
	38505 Country Club Drive, Suite 200
	Farmington Hills, MI 48331
	Rebecca Nuno
	248-489-8300
	r.nuno@fusion92.com
	VS0017384

<b>STATE</b>	Program Manager	Jon Spieles	DNR
		517-388-1748	
	spielesj@michigan.gov		
	Contract Administrator	Marissa Gove	DTMB
517-449-8952			
Govem1@michigan.gov			

<b>CONTRACT SUMMARY</b>			
<b>DESCRIPTION: Marketing and Advertising Services for Michigan Wildlife Council (MWC) Benefits of Hunting and Fishing Educational Media Campaign</b>			
<b>INITIAL EFFECTIVE DATE</b>	<b>INITIAL EXPIRATION DATE</b>	<b>INITIAL AVAILABLE OPTIONS</b>	<b>EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW</b>
December 10, 2024	June 7, 2028	2-1 Year	
<b>PAYMENT TERMS</b>		<b>DELIVERY TIMEFRAME</b>	
Net 45 Days, 1% if paid in 15 Days		N/A	
<b>ALTERNATE PAYMENT OPTIONS</b>			<b>EXTENDED PURCHASING</b>
<input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>MINIMUM DELIVERY REQUIREMENTS</b>			
N/A			
<b>MISCELLANEOUS INFORMATION</b>			
<b>THIS IS NOT AN ORDER.</b> This Contract Agreement is awarded on the basis of the State's inquiry bearing the solicitation number RFP 240000001711. Orders for Delivery will be issued directly by the Departments through the issuance of a Delivery Order (DO).			
<b>ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION</b>			<b>\$4,200,000.00</b>

**FOR THE CONTRACTOR:**

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

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

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

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

**FOR THE STATE:**

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

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

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

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

# STANDARD CONTRACT TERMS

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This STANDARD CONTRACT (“**Contract**”) is agreed to between the State of Michigan (the “**State**”) and Virtual Marketing, LLC dba Fusion92 (“**Contractor**”), an Illinois limited liability company. This Contract is effective on December 10, 2024 (“**Effective Date**”), and unless terminated, will expire on June 7, 2028 (the “**Term**”). December 10, 2024 through June 7, 2025 is the implementation and transition period and no payment will be made to the Contractor during this time. The Contractor must begin providing all services without interruption on June 8, 2025.

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

The parties agree as follows:

- 1. Duties of Contractor.** Contractor must perform the services and provide the deliverables (the “**Contract Activities**”) described in a Statement of Work, the initial Statement of Work is attached as Schedule A – Statement of Work. An obligation to provide delivery of any commodity is considered a service and is a Contract Activity.

Contractor must furnish all labor, equipment, materials, and supplies necessary for the performance of the Contract Activities unless otherwise specified in a Statement of Work.

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

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

- 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 State:	If to Contractor:
See Contract Administrator information shown below.	<b>Rebecca Nuno</b> <b>38505 Country Club Drive, Suite 110</b> <b>Farmington Hills, MI 48331</b> <a href="mailto:r.nuno@fusion92.com">r.nuno@fusion92.com</a> <b>248-489-8300</b>

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

State:	Contractor:
<b>Marissa Gove</b> <b>320 South Walnut Street</b> <b>Lansing, MI 48933</b> <a href="mailto:GoveM1@michigan.gov">GoveM1@michigan.gov</a> <b>517-449-8952</b>	<b>Rebecca Nuno</b> <b>38505 Country Club Drive, Suite 110</b> <b>Farmington Hills, MI 48331</b> <a href="mailto:r.nuno@fusion92.com">r.nuno@fusion92.com</a> <b>248-489-8300</b>

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

State:	Contractor:
<b>Jon Spieles</b> <b>525 West Allegan Street</b> <b>Lansing, MI 48933</b> <a href="mailto:spielesj@michigan.gov">spielesj@michigan.gov</a> <b>517-388-1748</b>	<b>Julia Francke</b> <b>38505 Country Club Drive, Suite 110</b> <b>Farmington Hills, MI 48331</b> <a href="mailto:j.francke@fusion92.com">j.francke@fusion92.com</a> <b>248-489-8300</b>

5. **Performance Guarantee.** Contractor must at all times have financial resources sufficient, in the opinion of the State, to ensure performance of the Contract and must provide proof upon request. The State may require a performance bond (as specified in a Statement of Work) if, in the opinion of the State, it will ensure performance of the Contract.

6. **Insurance Requirements.** See Schedule C.

7. **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 at: <https://www.thepayplace.com/mi/dtmb/adminfee>.

Contractor must submit an itemized purchasing activity report, which includes at a minimum, the name of the purchasing entity and the total dollar volume in sales. Reports must 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.

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

Upon written agreement between the State and Contractor, this contract may also be extended to: (a) other states (including governmental subdivisions and authorized entities) and (b) State of Michigan employees.

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

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

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

- 10. Intellectual Property Rights.** If a Statement of Work requires Contractor to create any intellectual property, Contractor hereby acknowledges that the State is and will be the sole and exclusive owner of all right, title, and interest in the Contract Activities and all associated intellectual property rights, if any. Such Contract Activities are works made for hire as defined in Section 101 of the Copyright Act of 1976. To the extent any Contract Activities and related intellectual property do not qualify as works made for hire under the Copyright Act, Contractor will, and hereby does, immediately on its creation, assign, transfer and otherwise convey to the State, irrevocably and in perpetuity, throughout the universe, all right, title and interest in and to the Contract Activities, including all intellectual property rights therein.

- 11. Subcontracting.** Contractor may not delegate any of its obligations under the Contract without the prior written approval of the State. Contractor must notify the State at least 90 calendar days before the proposed delegation and provide the State any information it requests to determine whether the delegation is in its best interest. If approved,

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

- 12. Staffing.** The State's Contract Administrator may require Contractor to remove or reassign personnel providing services by providing a notice to Contractor.
- 13. Background Checks.** Pursuant to Michigan law, all agencies subject to IRS Pub. 1075 are required to ask the Michigan State Police to perform fingerprint background checks on all employees, including Contractor and Subcontractor employees, who may have access to any database of information maintained by the federal government that contains confidential or personal information, including, but not limited to, federal tax information. Further, pursuant to Michigan law, any agency described above is prohibited from providing Contractors or Subcontractors with the result of such background check. For more information, please see Michigan Public Act 427 of 2018. Upon request, or as may be specified in a Statement of Work, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks.
- 14. 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.
- 15. 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.

- 16. Ordering.** Contractor is not authorized to begin performance until receipt of authorization as identified in a Statement of Work.
- 17. Acceptance.** Contract Activities are subject to inspection and testing by the State within 30 calendar days of the State’s receipt of them (“**State Review Period**”), unless otherwise provided in a Statement of Work. If the Contract Activities are not fully accepted by the State, the State will notify Contractor by the end of the State Review Period that either: (a) the Contract Activities are accepted but noted deficiencies must be corrected; or (b) the Contract Activities are rejected. If the State finds material deficiencies, it may: (i) reject the Contract Activities without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate this Contract in accordance with Section 24, Termination for Cause.

Within 10 business days from the date of Contractor’s receipt of notification of acceptance with deficiencies or rejection of any Contract Activities, Contractor must cure, at no additional cost, the deficiency and deliver unequivocally acceptable Contract Activities to the State. If acceptance with deficiencies or rejection of the Contract Activities impacts the content or delivery of other non-completed Contract Activities, 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.

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

- 18. Reserved**
- 19. Reserved.**
- 20. Reserved.**

- 21. Invoices and Payment.** Invoices must conform to the requirements communicated from time-to-time by the State. All undisputed amounts are payable within 45 days of the State’s receipt. Contractor may only charge for Contract Activities provided as specified in a Statement of Work. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services purchased under this Agreement 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.

The State has the right to withhold payment of any disputed amounts until the parties agree as to the validity of the disputed amount. The State will notify Contractor of any

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

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

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 (including any public educational institution within the State of Michigan) of Contractor. If Contractor enters into any arrangements with another customer of Contractor to provide the products or services, available under this Contract, under more favorable prices, as the prices may be indicated on Contractor's current U.S. and International price list or comparable document, then this Contract will be deemed amended as of the date of such other arrangements to incorporate those more favorable prices, and Contractor will immediately notify the State of such fee and formally memorialize the new pricing in a change notice.

- 22. Liquidated Damages.** Liquidated damages, if applicable, will be assessed as described in a Statement of Work. The parties understand and agree that any liquidated damages (which includes but is not limited to applicable credits) set forth in this Contract are reasonable estimates of the State's damages in accordance with applicable law. The parties acknowledge and agree that Contractor could incur liquidated damages for more than 1 event. 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 24 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. 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.
- 23. Stop Work Order.** The State may suspend any or all activities under the Contract at any time. The State will provide Contractor a written stop work order detailing the

suspension. Contractor must comply with the stop work order upon receipt. Within 90 calendar days, or any longer period agreed to by Contractor, the State will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate the Contract or delivery order. The State will not pay for Contract Activities, Contractor's lost profits, or any additional compensation during a stop work period.

**24. Termination for Cause.** (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 any facility, data, or personnel; (ii) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (iii) engages in any conduct that may expose the State to liability; (iv) breaches any of its material duties or obligations under this Contract; or (v) fails to cure a breach within the time stated by the State in a notice of breach, if in its sole discretion the State has chosen to provide a time to cure. 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, the State will issue a termination notice specifying whether Contractor must: (i) cease performance immediately. Contractor must submit all invoices for Contract Activities 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 Contract Activities 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 the Contract, the termination will be deemed to have been a Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in Section 25, Termination for Convenience.

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

**25. Termination for Convenience.** The State may immediately terminate this Contract in whole or in part without penalty and for any reason or no reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities immediately. Contractor must submit all invoices for Contract Activities 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 Contractor for Contract Activities accepted by the State under this Contract, or (b) continue to perform the Contract Activities in accordance with Section 26, Transition Responsibilities. If the

State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities to the extent the funds are available.

- 26. Transition Responsibilities.** Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed 180 calendar days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the State or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Contract Activities at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other documentation, to the State or the State's designee; (c) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and (d) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.
- 27. Return of State Property.** Upon termination or expiration of this Contract for any reason, Contractor must take all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to the Contractor by any entity, agent, vendor, or employee of the State.
- 28. Indemnification.** Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

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

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

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

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

- 29. Infringement Remedies.** If, in either party's opinion, any piece of equipment, software, commodity, or service supplied by Contractor or its subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor must, at its expense: (a) procure for the State the right to continue using the equipment, software, commodity, or service, or if this option is not reasonably available to Contractor, (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by the State with appropriate credits to the State against Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.
- 30. Limitation of Liability and Disclaimer of Damages. IN NO EVENT WILL THE STATE'S AGGREGATE LIABILITY TO CONTRACTOR UNDER THIS CONTRACT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT, EXCEED THE MAXIMUM AMOUNT OF FEES PAYABLE UNDER THIS CONTRACT.** The State is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action.
- 31. Disclosure of Litigation, or Other Proceeding.** Contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "**Proceeding**") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of the Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (3) any complaint filed in a legal or administrative proceeding alleging the Contractor or its subcontractors discriminated against its employees, subcontractors, vendors, or suppliers during the term of this Contract; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.
- 32. State Data.** All data and information provided to Contractor by or on behalf of the State, and all data and information derived therefrom, is the exclusive property of the State

(“**State Data**”); this definition is to be construed as broadly as possible. Upon request, Contractor must provide to the State, or a third party designated by the State, all State Data within 10 calendar days of the request and in the format requested by the State. Contractor will assume all costs incurred in compiling and supplying State Data. No State Data may be used for any marketing or commercial purposes.

**33. Reserved.**

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

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

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

- c. Cooperation to Prevent Disclosure of Confidential Information.** Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
- d. Remedies for Breach of Obligation of Confidentiality.** Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.
- e. Surrender of Confidential Information upon Termination.** Upon termination of this Contract or a Statement of Work, in whole or in part, each party must, within 5 calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Contract. Should Contractor or the State determine that the return of any Confidential Information is not feasible, such party must destroy the Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other party. However, the State's legal ability to destroy Contractor data may be restricted by its retention and disposal schedule, in which case Contractor's Confidential Information will be destroyed after the retention period expires.
- f. Third-Party Requests.** Contractor will immediately notify the State upon receipt of any third-party requests which in any way might reasonably require access to State Data. Contractor will notify the State Program Managers or their designees by the fastest means available and also in writing. Contractor must provide such notification within twenty-four (24) hours from Contractor's receipt of 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. Upon request by the State, Contractor must provide to the State, its proposed response to the third-party request with adequate time for the State to review, and, as it deems necessary, to revise the response, object, or take other action.

**35. Reserved.**

**36. Reserved.**

**37. Reserved.**

- 38. Records Maintenance, Inspection, Examination, and Audit.** Pursuant to MCL 18.1470, the State or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain and provide to the State or its designee and the auditor general upon request, all records related to the Contract through the term of the Contract and for 4 years after the latter of termination, expiration, or final payment under this Contract or any extension (“**Audit Period**”). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.

Within 10 calendar days of providing notice, the State and its authorized representatives or designees have the right to enter and inspect Contractor's premises or any other places where Contract Activities 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 the Contract must be paid or refunded within 45 calendar days.

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

- 39. Representations and Warranties.** Contractor represents and warrants: (a) Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use; (b) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect; (c) the Contract Activities will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (d) Contractor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Contract Activities; (e) the Contract Activities are merchantable and fit for the specific purposes identified in the Contract; (f) the Contract signatory has the authority to enter into this Contract; (g) all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the State of any material adverse changes; (h) all information furnished and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading; and that (i) 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. A breach of this Section is considered a material breach of this Contract, which entitles the State to terminate this Contract under Section 24, Termination for Cause.

- 40. Conflicts and Ethics.** Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing

anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of the Contract. Contractor must immediately notify the State of any violation or potential violation of these standards. This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

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

**42. Reserved.**

**43. Reserved.**

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

**45. Unfair Labor Practice.** Under MCL 423.324, the State may void this Contract if the name of the Contractor, or the name of a subcontractor, manufacturer, or supplier of the Contractor, subsequently appears on the Unfair Labor Practice register compiled under MCL 423.322.

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

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

**48. Force Majeure.** Neither party will be in breach of this Contract because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume

performance. Contractor will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third party.

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

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

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

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

Document Title	Document Description
Schedule A	Statement of Work
Schedule B	Pricing
Schedule C	Insurance Requirements
Schedule D	Service Level Agreement for Hybrid Purchases
Schedule E	Data Security Requirements for Hybrid Purchases

**52. Entire Agreement and Order of Precedence.** This Contract, which includes Statement of Work, and schedules and exhibits, is the entire agreement of the parties related to the Contract Activities. This Contract supersedes and replaces all previous understandings and agreements between the parties for the Contract Activities. If there is a conflict between documents, the order of precedence is: (a) first, this Contract, excluding its schedules, exhibits, and Statement of Work; (b) second, Statement of Work as of the Effective Date; and (c) third, schedules expressly incorporated into this Contract as of

the Effective Date. NO TERMS ON CONTRACTOR'S INVOICES, ORDERING DOCUMENTS, WEBSITE, BROWSE-WRAP, SHRINK-WRAP, CLICK-WRAP, CLICK-THROUGH OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS PROVIDED WITH ANY OF THE CONTRACT ACTIVITIES, OR DOCUMENTATION HEREUNDER, EVEN IF ATTACHED TO THE STATE'S DELIVERY OR PURCHASE ORDER, WILL CONSTITUTE A PART OR AMENDMENT OF THIS CONTRACT OR IS BINDING ON THE STATE 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 THE CONTRACT ACTIVITIES REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.

- 53. Severability.** If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.
- 54. Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
- 55. Survival.** Any right, obligation or condition that, by its express terms or nature and context is intended to survive, will survive the termination or expiration of this Contract; such rights, obligations, or conditions include, but are not limited to, those related to transition responsibilities; indemnification; disclaimer of damages and limitations of liability; State Data; non-disclosure of Confidential Information; representations and warranties; insurance and bankruptcy.
- 56. Contract Modification.** This Contract may not be amended except by signed agreement between the parties (a "**Contract Change Notice**"). Notwithstanding the foregoing, no subsequent Statement of Work or Contract Change Notice executed after the Effective Date will be construed to amend this Contract unless it specifically states its intent to do so and cites the section or sections amended.

# SCHEDULE A - STATEMENT OF WORK CONTRACT ACTIVITIES

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## Contract No. 24000001303

Marketing and Advertising Services for Michigan Wildlife Council Benefits of Hunting and Fishing Educational Media Campaign

### BACKGROUND

In Public Act 246 of 2013, the Legislature created the Michigan Wildlife Council (MWC) effective as of March 27, 2014. The MWC oversees the expenditures from the Michigan Wildlife Management Public Education fund, which is derived by a \$1 surcharge on all Michigan hunting base licenses and fishing licenses. The nine members of the MWC are appointed by the Governor and subject to the advice and consent of the Senate.

Public Act 246 mandates that the MWC: Develop and implement, in conjunction with a third-party marketing or advertising agency, a comprehensive media-based public information program to promote the essential role that sportsmen and sportswomen play in furthering wildlife conservation and to educate the general public about hunting, fishing, and the taking of game. That education must include, but is not limited to, teaching that hunting, fishing, and the taking of game are any of the following: (i) Necessary for the conservation, preservation, and management of this state's natural resources. (ii) A valued and integral part of the cultural heritage of this state and should forever be preserved. (iii) An important part of this state's economy. (iv) A primary source of funding for the conservation, preservation and management of this state's natural resources.

In Michigan, approximately 7% - 10% of the State's population hunt and/or fish. A similar percentage opposes these activities in varying degrees. It is the responsibility of the Contractor to develop, implement and manage a media-based public information program (the "Campaign") to educate and influence the balance of the State's population, approximately 80%, and achieve the following objectives:

1. Provide an understanding of public opinion, perception and interest in hunting, fishing and trapping, and the use of our state's natural resources.
2. Increase public awareness and understanding of:
  - a. The myriad ways hunting, fishing, and trapping directly and indirectly benefit both game and nongame wildlife species and their respective habitats for the enjoyment of all citizens of and visitors to the State of Michigan.
  - b. The significant contribution hunting, fishing and trapping represent to the State's economic health on a local, regional and statewide basis through both direct and indirect commerce and employment related to these activities.

- c. The intangible contributions hunting and fishing traditions make to the quality of life for families and communities, and how they sustain the natural resource heritage which is an indelible part of the State's history.
  - d. How hunter/angler license and equipment sales fund the management, conservation and protection of our State's natural resources.
3. Increase the non-hunting/fishing public's understanding of the benefits and privileges associated with hunting, fishing and trapping.

## **SCOPE**

The Contractor will provide professional, strategic marketing, branding, communications and media-placement services to assist the MWC in developing and implementing campaign/s that will address priority goals as stated above.

Activities include, but are not limited to, marketing research, coordination, planning, writing, graphic design, photography, video production, radio and television public service announcement and advertising production, social and digital media planning and purchasing, and management of the existing website ([Michigan Wildlife Council \(hereformioutdoors.org\)](http://MichiganWildlifeCouncil.org)). Writing, graphic design and production are for all media types: web, email, social media, video, print, radio and digital advertising.

The work will involve meeting with MWC to review current research and campaign/s and make research-based strategic recommendations to achieve goals and outcomes. It will also include developing and implementing marketing plans to reach priority goals, using a variety of media appropriate for the audience and within budget. It would also involve communications coordination and media support for special projects.

The Contractor will work in conjunction with MWC and the Michigan Department of Natural Resources (DNR).

## **1. Requirements**

### **1.1. General Requirements**

The Contractor must implement and manage the MWC campaign and provide full spectrum marketing and advertising services for MWC goals and priorities as directed by the MWC.

#### **A. Communications/Marketing**

1. The Contractor must develop a cost-efficient, comprehensive statewide annual communications/marketing plan for the statewide media-based education campaign that reaches the target audience.
2. The Contractor must identify innovative, creative, and cost-effective ways to reach target audiences.

3. Annually, and based on and supported by the statewide research, the Contractor must work with the MWC to identify specific metrics of success that would increase public awareness and understanding of the values of hunting, fishing and trapping. Metrics include measures that would increase support among the public for hunting and fishing activities and to increase their understanding about the economic and cultural values of these activities in Michigan. Success will be measured by accepted industry standards – improvement in public’s understanding of the critical role that hunting and fishing play in wildlife management, objectively evaluated against annual survey results.

## **B. Market Research**

1. The Contractor must conduct market/audience research, as appropriate, to better assess and understand target populations. This research may include the use of marketing databases (e.g., Nielsen, PRIZM), focus groups, intercept surveys, observational research, telephone surveys and other tools as approved to help determine/refine message and creative strategies. The Contractor must present a research plan for approval by MWC.
  - a. The Contractor must make recommendations to the MWC on primary and secondary target audiences.
  - b. The Contractor must perform necessary research to understand the Michigan public and their attitudes and perceptions towards hunting, fishing and trapping in the first year to establish a benchmark. Annually, the Contractor will execute a statewide survey to quantify the campaign’s progress, and to drive improvements in the campaign strategy for the next year.
  - c. The Contractor must use research to identify relevant themes and messages to communicate with the target audience that are consistent with the MWC’s mission.
2. Evaluate strategies, associated messaging and results annually using media industry accepted scientific research techniques.
3. If directed by the MWC, the Contractor must cooperate and work in tandem with a third-party organization recommended and approved by the MWC to perform probabilistic, scientific sampling to calculate a “correction factor” for the marketing research and to ensure the ongoing marketing research provides an accurate depiction of Michiganders’ opinions regarding the campaign and level of understanding regarding the goals of the campaign.

## **C. Media**

1. The Contractor is responsible for developing media plans for all campaigns and their appropriate target audiences, messages, message strategies, and

communication vehicles designed to meet stated goals and outcomes. The Contractor must present this plan twice per year for review and approval by MWC.

- a. Media Planning Timelines:
  - i. Media Briefing with the Contractor’s internal team – Week 0
  - ii. Contractor Media Planning – Weeks 1-3
  - iii. Media Plan Presentation – Week 4
  - iv. MWC Team Feedback – Week 5 (5 business days)
  - v. Media Plan Revision (if needed) – Week 6 (5 business days)
  - vi. Media Plan Final – Week 7
- b. Digital Media Activation: Media will be activated business days after final creative assets are approved/received, including up to 5 business days for the Contractor to tag/traffic internally.
- c. Once this media plan is reviewed and approved by the MWC, the Contractor will proceed with developing individual media buys based on the plans.
- d. The Contractor is also responsible for advertising placement and must:
  - i. Buy and negotiate radio, television, and cable airtime, cinema, internet, publication space, outdoor and transit space, direct mail services, and any other media used for advertising and promotions projects. Negotiate matching spots, value added, bonus, and other creative means to further advertising reach.
  - ii. Negotiate and purchase all forms of digital media including desktop and mobile if needed and approved by the MWC. The Contractor will continually optimize performance of purchased advertising throughout the campaign to ensure the best results are achieved.
  - iii. Evaluate and inform MWC of any special or unique media placements or opportunities.
  - iv. The Contractor is responsible for shipping/uploading all radio and television dubs, in the appropriate media formats, with traffic instructions, to stations in time to meet program deadlines.
  - v. Negotiate make-good media-weight for any under-delivery to be scheduled during the next applicable paid media flight.
  - vi. Conduct a post-buy review/analysis on the placement of media and the effectiveness of media buys in terms of cost, reach, frequency, continuity, and message dispersion requirements, etc. for each media campaign. The Contractor must submit this post analysis report to the MWC at the quarterly meeting following the end of each media buy. The Contractor must use findings to refine current and future media plans.
  - vii. Provide follow-up reporting to MWC including invoice reconciliation and audience delivery assessments with an objective of receiving plus or

minus 10 percent of the Gross Rating Points (GRP) goal in the proposed media buy.

- viii. Provide a final report of the base buy plus the bonus weight no later than 60 days after the media buy and bonus have aired to DNR. Return on Investment (ROI) for the bonus weight must be included in the report.
2. The Contractor must maximize impact and exposure within the designated budget, provide added value opportunities as available through innovative ideas, creative partnerships, and aggressive negotiation skills to leverage funding available for paid advertising. These must include all mass media, social media and earned media opportunities, as appropriate.
3. Placement services include not only paid media but also value-added media, Michigan Association of Broadcasters (MAB) media, Michigan Cable Telecommunications (MCTA) media, and Michigan Press Association (MPA) media.
4. The Contractor must cooperate and work in tandem with third-party media auditing services to periodically examine and audit advertising released through the various media to verify that quality, timing, position, and distribution are consistent with the approved plans, guidelines, and industry standards. If, for any reason, the auditing service finds these conditions are not met, it is the Contractor's responsibility to rectify the situation.

#### **D. Creative**

1. The Contractor must create high-impact, effective, within-budget creative strategies and tactics. The Contractor must evaluate the performance of media, message and other marketing strategies and deliver creative concepts and messages that will meet stated goals and outcomes.
2. The Contractor must refresh existing ads as requested and develop new ad themes, campaigns, and campaign assets, including 30-second TV ads, radio ads, pre-roll, billboards, etc.).
3. The Contractor must design collateral materials (such as banners, posters, radio liners, web banners, etc.).
4. The Contractor is responsible for developing or modifying advertising/marketing/creative concepts within established budgets, including but not limited to TV, radio, print, digital, social and other media channels.
5. The Contractor must work to create compelling ads to drive engagements and actions for digital media.
6. The Contractor is required to prepare a creative brief and present at least three (3) creative concepts to the MWC for review. One (1) concept is taken to final art or script and storyboard, which is routed for review and comment. Once changes are made and reviewed, the concept will receive final approval from the MWC to move

forward. In instances where MWC is not completely satisfied with the creative presented, the Contractor will get prompt feedback and will require the creative team to immediately move forward with developing new concepts.

7. All communications must be accurately reflective of diverse target audiences.
8. All creative concepts/materials/productions must be copyright free, including non-rights managed visual materials (to be used in print, online, and other forms) and full buy-out (unrestricted use) of talent in all Michigan media (broadcast, cable, and online) for a minimum four-year period. The Contractor must ensure that in negotiations of talent rights, the State will be signatory on all talent/property rights.
9. The Contractor is responsible for guiding, developing, and assisting in managing any existing or new social media/new media strategies and deliverables (including mobile, interactive, streaming, etc.) to complement advertising and earned media campaigns.

#### **E. Production**

The Contractor is responsible for directing and coordinating all aspects of production for television and radio, digital and print advertising. These may include, but are not limited to website, billboards, fliers, TV, radio, internet and social media digital ads.

#### **F. Website Management, Development and Maintenance.**

The Contractor must secure the host provider for the existing website: <https://hereformioutdoors.org>. The DNR and MWC own the website and all content. The site collects email addresses for those that visit the site and want to request a newsletter.

1. The Contractor must maintain and manage the newsletter and email list.
2. The DNR and MWC must have control of all content. The Contractor must manage the site and develop and maintain the site as directed by the Program Manager and driven by the campaign needs. The Contractor must provide access to the State upon request.
3. The Contractor must manage, develop, and maintain the site in compliance with all Contract terms and Section 1.5 Specific Standards, IT Policies, Standards and Procedures (PSP).
4. The Contractor is responsible for ensuring that the website is mobile-friendly, and maintains a cutting-edge design, look and flow that is standard best practice for websites.

5. The Contractor will test the site to ensure speed, design, and user flow are correct using the most current industry standard tools.
6. The Contractor must provide usage stats in their quarterly reporting. These reports must include highlights of the website usage, along with easy-to-understand recommendations for changes or improvements based on what the Contractor finds from the stats and other campaign results.
7. The Contractor must maintain the following functionality on the website at a minimum, and incorporate any additional functionality as determined by the DNR and MWC and driven by the campaign needs.
  - a. Coordinate site with social media
  - b. Responsive, mobile-friendly design
  - c. Design the site to be consistent with branding
8. The Contractor must secure additional web domains if needed as part of the campaign.

#### **G. Additional Services**

1. The Contractor must plan, organize, and conduct special public relations services and media events as requested by the MWC. Work includes but is not limited to the following:
  - a. Implementing media outreach and earned media opportunities
  - b. Developing editorials, articles and outreach materials, and media pitches
  - c. Event planning and implementation
  - d. Developing Media opportunities/briefs
  - e. Arranging Speaker bureaus
  - f. Providing Speechwriting
  - g. Providing Media relations
  - h. Providing Media event logistics
  - i. Creating Press Kit
2. The Contractor must work with other MWC and State marketing vendors and partners as directed by the MWC.
3. The Contractor must make presentations to additional audiences as requested by MWC and DNR (estimate of 5 to 10 times per year). The Contractor must develop and provide any associated presentation materials.

#### **H. Implementation**

As a one-time project upon award, the Contractor must review existing campaigns and performance reports in order to provide recommendations to maximize value from the existing media mix.

## **1.2. Transition**

End of Contract Conversion Responsibility: At Contract expiration or termination, the Contractor must work with State personnel and other contractors, if applicable, to convert or transition all Contract Activities, services, web domains, and data into an acceptable format for uploading into or importing into a State-owned database. The Contractor must work with the State and/or previous contractor during implementation of the transition plan to affect an orderly transition to the new contractor if applicable. The Contractor must allow as many personnel as practicable to attend meetings and receive hardcopy and original/master electronic files (excel, PDF, InDesign, etc.) to help maintain the continuity and consistency of the services required by the Contract. The Contractor agrees to receive reasonable detailed specifications for all Contract Activities previously provided to the State to properly provide the Contract Activities required under the Contract.

## **1.3. Training**

The Contractor must provide training for council members in media interview and presentation skills for public presentations and contact with legislators.

The Contractor must provide documentation and training materials.

## **1.4. Specific Standards**

### **IT Policies, Standards and Procedures (PSP)**

Contractors are advised that the State has methods, policies, standards and procedures that have been developed over the years. Contractors are expected to conform to State IT policies and standards. All services and products provided in this Contract must comply with all applicable State IT policies and standards. Contractor is required to review all applicable links provided below and state compliance in their response.

Public IT Policies, Standards and Procedures (PSP):

[DTMB - IT Policies, Standards & Procedures \(michigan.gov\)](https://www.michigan.gov/dtmb)

### **Acceptable Use Policy**

To the extent that Contractor has access to the State's computer system, Contractor must comply with the State's Acceptable Use Policy, see [1340.00.130.02 Acceptable Use of Information Technology \(michigan.gov\)](#). All Contractor Personnel will be required, in writing, to agree to the State's Acceptable Use Policy before accessing the State's system. The State reserves the right to terminate Contractor's access to the State's system if a violation occurs.

### **Mobile Responsiveness**

The Contractor must utilize responsive design practices to ensure the website is responsive via a mobile device.

**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.

**1.5. User Type and Capacity**

Type of User	Access Type	Number of Users	Number of Concurrent Users
Public Anonymous	Mostly read only with the ability to sign up for newsletters	10,000 – 50,000	5,000 – 10,000

Contractor must be able to meet the expected number of concurrent Users listed above. July and August will have a higher number of users accessing.

**1.6. End-User Operating Environment**

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

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

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

This information can be found at <https://www.michigan.gov/browserstats>. Please use the most recent calendar quarter to determine browser statistics. Support is required for desktop and mobile and tablet browsers identified with over 2% of site traffic.

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

**1.7. Migration**

The Contractor's solution must be able to migrate the list of email recipients from the current system to their solution and seamlessly allow those individuals to continue to receive newsletters without the user needing to re-sign up.

### **1.8. Hosting**

Contractor must maintain and operate a backup and disaster recovery plan to achieve a Recovery Point Objective (RPO) of 24 hours, and a Recovery Time Objective (RTO) of 24 hours.

### **1.9. Products and Services**

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 must 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 Program Managers may decide to use the Contractor's provided templates, as long as they demonstrate fulfillment of the SUITE methodologies.

## **2. Acceptance**

The State will use the following criteria to determine acceptance of the Contract Activities:

Before approving invoices for payment, the Program Manager will review deliverables and review invoices to verify costs are accurate. Contractor's invoices must include detailed information for the project. The State will pay the Contractor for its costs incurred related to the Deliverables plus mark-up based on the Contract rates. The State will reimburse the Contractor only for services and/or merchandise authorized by MWC, approved by the MWC and DNR, and provided for in the purchase order. Payment will not exceed the amount approved by authorized estimate without submission and approval of a revised estimate.

## **3. Staffing**

### **3.1. Contractor Representative**

The Contractor must appoint one individual specifically assigned to State of Michigan accounts, who will respond to State inquiries regarding the Contract Activities, answer questions related to ordering and delivery, etc. (the “Contractor Representative”).

The Contractor must notify the Contract Administrator at least 14 calendar days before removing or assigning a new Contractor Representative.

Contractor Representative: Rebecca Nuno

**3.2. Contract Administrator**

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

State:	Contractor:
<b>Marissa Gove</b> <b>320 South Walnut Street</b> <b>Lansing, MI 48933</b> <a href="mailto:GoveM1@michigan.gov">GoveM1@michigan.gov</a> <b>517-449-8952</b>	<b>Rebecca Nuno</b> <b>38505 Country Club Drive, Suite 110</b> <b>Farmington Hills, MI 48331</b> <a href="mailto:r.nuno@fusion92.com">r.nuno@fusion92.com</a> <b>248-489-8300</b>

**3.3. Program Manager**

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

State:	Contractor:
<b>Jon Spieles</b> <b>525 West Allegan Street</b> <b>Lansing, MI 48933</b> <a href="mailto:spielesj@michigan.gov">spielesj@michigan.gov</a> <b>517-388-1748</b>	<b>Julia Francke</b> <b>38505 Country Club Drive, Suite 110</b> <b>Farmington Hills, MI 48331</b> <a href="mailto:j.francke@fusion92.com">j.francke@fusion92.com</a> <b>248-489-8300</b>

**3.4. Customer Service Number**

The Contractor must specify its number for the State to contact the Contractor Representative. The Contractor Representative must be available for calls during the hours of 8:00 am to 5:00 pm EST.

Contractor Customer Service Number: 248-489-8300

**3.5. Work Hours**

The Contractor must provide Contract Activities during the State’s normal working hours Monday – Friday, 8:00 a.m. to 5:00 p.m. EST and possible night and weekend hours depending on the requirements of the project.

**3.6. Key Personnel**

The Contractor must appoint a minimum of 8 individuals who will be directly responsible for the day-to-day operations of the Contract (“Key Personnel”). Key Personnel must be specifically assigned to the State account, be knowledgeable on the contractual requirements, and respond to State inquiries within 24 hours.

Below is a list of key personnel positions that must be included, at a minimum, in the bid response. Also listed are recommended minimum experience levels.

Key Personnel	Recommended Minimum Experience
Senior Level Strategic Counsel / Firm Principal	7 years of advertising experience. Experience leading/directing major accounts.
Account Manager	5 years of advertising experience. Experience supervising advertising projects
Creative / Art Director	3 years of experience developing creative advertising
Media Coordinator	3 years of planning and/or buying media.
Researcher(s)	At least 1 position: 3 years primary and secondary research experience.
Copywriter(s)	At least 1 position: 3 years of advertising copywriting experience.
Public Relations Manager	5 years of managing public relations.
Billing Coordinator	No minimum experience recommended.

The State has the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the State of the proposed assignment, introduce the individual to the State’s Project Manager, and provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State will provide a written explanation including reasonable detail outlining the reasons for the rejection. The State may require a 30-calendar day training period for replacement personnel.

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 the **Termination for Cause** section of the Standard Contract Terms. 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 fix 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 Termination for Cause, Contractor will issue to the State the corresponding credits set forth below (each, an “Unauthorized Removal Credit”):

- (i)** For the Unauthorized Removal of any Key Personnel designated in the applicable Statement of Work, the credit amount will be \$25,000.00 per individual if Contractor identifies a replacement approved by the State and assigns the replacement to shadow the Key Personnel who is leaving for a period of at least 30-calendar days before the Key Personnel’s removal.
- (ii)** If Contractor fails to assign a replacement to shadow the removed Key Personnel for at least 30-calendar days, in addition to the \$25,000.00 credit specified above, Contractor will credit the State \$833.33 per calendar day for each day of the 30-calendar day shadow period that the replacement Key Personnel does not shadow the removed Key Personnel, up to \$25,000.00 maximum per individual. The total Unauthorized Removal Credits that may be assessed per Unauthorized Removal and failure to provide 30-calendar days of shadowing will not exceed \$50,000.00 per individual.

Contractor acknowledges and agrees that each of the Unauthorized Removal Credits assessed 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.

The Contractor must identify the Key Personnel, indicate where they will be physically located, describe the functions they will perform, and provide current chronological résumés.

- A.** The Contractor must identify all Key Personnel that will be assigned to this contract in the table below which includes the following:
1. Name and title of staff that will be designated as Key Personnel.
  2. Which of the required key personnel positions they are fulfilling.
  3. Key Personnel’s roles and responsibilities, as they relate to this Contract. Descriptions of roles must be functional and not just by title.
  4. Identify if each Key Personnel is a direct, subcontract, or contract employee.
  5. Identify if each Key Personnel staff member is employed full-time (FT), part-time (PT) or temporary (T), including consultants used.
  6. Identify where each Key Personnel staff member will be physically located (city and state) during the Contract performance.

1. Name	2. Which of the key personnel positions they are fulfilling.	3. Role(s) / Responsibilities	4. Direct / Subcontract / Contract	5. FT/P T/T	6. Physical Location
Rebecca Nuno	Senior-Level Strategic Counsel	Account Management	Direct	FT	Farmington Hills, MI
Julia Francke	Account Manager	Account Management	Direct	FT	Farmington Hills, MI
Morgan Montgomery	N/A	Project Manager / Project Management	Direct	FT	Farmington Hills, MI
Sue LaRue	Senior-Level Strategic Counsel / Researcher	EVP, Strategy / Research & Brand Strategy	Direct	FT	Farmington Hills, MI
Kirstin Barton	N/A	VP Content Strategy / Content Strategy	Direct	FT	Farmington Hills, MI

1. Name	2. Which of the key personnel positions they are fulfilling.	3. Role(s) / Responsibilities	4. Direct / Subcontract / Contract	5. FT/P T/T	6. Physical Location
Keith Hamilton	Senior-Level Strategic Counsel	VP, Media Director / Media Planning	Direct	FT	Farmington Hills, MI
Kaylee Brown	Media Coordinator	Associate Media Director / Media Planning	Direct	FT	Farmington Hills, MI
Bryan Petrosky	N/A	Senior Business Intelligence Analyst / Reporting & Analytics	Direct	FT	Farmington Hills, MI
Bill Nowling	Public Relations Manager	Senior PR / Public Relations	Contractor	T	Farmington Hills, MI
Andy Gregor	Art Director	Art Director / Creative	Direct	FT	Farmington Hills, MI
Rebecca Maxey	Copywriter	Copywriter / Creative	Direct	FT	Farmington Hills, MI
Greg Auer	Senior-Level Strategic Counsel	Executive Creative Director / Creative & Production	Direct	FT	Farmington Hills, MI
Johnathon Hubert – McLennan	N/A	Producer / Creative Production	Direct	FT	Farmington Hills, MI
Randy Bishop	Senior-Level Strategic Counsel	VP, Technology / Website Development & Maintenance	Direct	FT	Farmington Hills, MI
Isaac Scroggins	N/A	Web Developer / Website Development & Maintenance	Direct	FT	Farmington Hills, MI

- B.** The Contractor must provide **detailed, chronological resumes** of all proposed Key Personnel, including a description of their work experience relevant to their purposed role as it relates to this Contract.

Qualifications will be measured by education and experience with particular reference to experience on projects similar to that described in this Contract.

### **3.7. Security**

The Contractor will be subject the following security procedures:

- a. The State may require the Contractor's personnel to wear State issued identification badges.
- b. The Contractor's staff may be required to make deliveries to or enter State facilities. The Contractor must: (a) explain how it intends to ensure the security of State facilities, (b) whether it uses uniforms and ID badges, etc., (c) identify the company that will perform background checks, and (d) the scope of the background checks.

## **4. Project Management**

- A. Any exception to Section 4.1 Project Plan requirements will be made by the MWC and DNR based on the size of the budget and campaign.
- B. The Contractor must work collaboratively with MWC, DNR and other agency or partner staff to implement various aspects of marketing, promotional and communications plans.
- C. The Contractor must provide account management that is proactive and flexible to meet changing business conditions.
- D. The Contractor must take initiative and be proactive in disclosing how budget will be affected with any proposed ideas, changes to plans, and directional decisions, maintaining up-to-date planning and budgeting documents with preciseness and accuracy and in compliance with the Contract.
- E. The Contractor must take all reasonable precautions to guard against any loss to MWC through the failure of suppliers to execute commitments properly.
- F. The Contractor must not begin any work on any project before the MWC has given formal approval and a work/expense authorization/delivery order has been issued and signed.
- G. Upon failure to meet a predetermined deadline, the Contractor must provide an explanation for such failure as soon as it is known and submit an updated project schedule to the MWC.

### **4.1. Project Plan**

- A. The Contractor must develop a critical path development schedule providing enough MWC and State approval timeframes from initial presentation of creative through the production and delivery of product.
- B. Prior to beginning work on a specific task or deliverable as agreed upon by the MWC, the Contractor must provide the MWC with a Project Plan that is inclusive of the breakdown of all requirements in Section 1. Requirements, showing tasks, sub-tasks, and the resources/staff assigned, and includes the following:
1. Project creative brief.
  2. Proposed research, as appropriate.
  3. Proposed message strategies, including social media when appropriate.
  4. Timelines (including staff assigned, hours of effort and hourly rate) showing days, weeks and months.
  5. Total anticipated costs, in a separate budgeting document that aligns with Contract language and rates on Schedule B, Pricing, and correlates with the other required project planning documents.
  6. Any associated assumptions in the planning and budgeting.
  7. Implementation Planning
    - a. Projected major project milestones.
    - b. Anticipated outcomes for each milestone.
    - c. A detailed corresponding calendar/timeline/schedule for the implementation period.
    - d. A discussion on how to manage the implementation process, transitioning from the current Contractor, or if you are the incumbent, what additional proactive steps you will take during the implementation period. Discussion must include their project management approach, including identifying methods, tools, and processes intended for oversight and completion of the implementation.
    - e. Any anticipated issues/changes, when they may arise, and how those issues will be conveyed to the appropriate State staff and include suggested resolution or risk mitigation strategies to the issue(s).
    - f. A detailed protocol and escalation communication process; the plan must also provide escalation procedures and contact information for issues that may need to be escalated above the Account Manager.
- C. The project plan for each campaign must encompass its entire life cycle while providing sufficient MWC and State approval timeframes from initial presentation through the production and delivery of material. The project plan must be updated with a status report as indicated in Section 4.3. Reporting.

- D. The Contractor must provide project plan documentation in a format that is pre-approved by the Program Manager, and established at the onset of the Contract
- E. As the project progresses, the project plan must become more refined and detailed with every stage and step for transparency. The project plan may consist of multiple documents (EXCEL, WORD, etc.). Budgeting forecasts must be broken down with detail of estimates showing how the estimate was derived, becoming more refined and accurate with every updated plan as more information is gathered and determined to define and guide the campaign's direction. The plan must align with Schedule A, Statement of Work, Schedule B, Pricing, and Invoicing.
- F. The MWC must approve the project plan before work may begin. The MWC reserves the right to not award any project plan quoted to the Contractor.
- G. The Contractor must carry out this Contract under the direction of the MWC and DNR Program Managers.
- H. The Contractor must have a documented process for addressing issues and changes as they develop throughout the Contract and state the individuals who are responsible for receiving/reacting to any issues/changes.

#### **4.2. Meetings**

The Contractor must attend the following meetings:

- A. In-person Kick-Off Meeting within 15 calendar days of the Effective Contract Date with MWC and State representatives, and once within the 30 days before Contract expiration. In the event of Contract expiration, additional meetings may be necessary for the Contractor to attend during a transition period.
- B. At least four times annually with the full MWC to review plans and deliverables.
- C. Within 10 calendar days of the Annual Campaign Meeting, the Contractor must submit an annual campaign plan to the MWC/DNR for final approval.
- D. Although there will be continuous liaison with the Contractor team, the Contractor must confer monthly at a minimum, with the MWC and DNR representatives for the purpose of reviewing progress and providing necessary guidance to the Contractor in solving problems that arise.
- E. The Contractor must confer with MWC or DNR upon request within 2 business days of contact to initiate services, requests, review materials, review progress, discuss problems, obtain advice and counsel, etc.

- F. The Contractor must meet in-person/on-site when deemed necessary by the MWC and/or DNR. The Contractor must conduct meetings with subcontractors independently as directed by the MWC or DNR.
- G. The Contractor must have available conference call capabilities.
- H. The Contractor must meet with the MWC and DNR representatives, upon request, to initiate services, requests, review materials, review progress, discuss problems, obtain advice and counsel, etc. for each phase of every project.

The State may request other meetings, as it deems appropriate.

### **4.3. Reporting**

The Contractor must submit to the MWC and State Program Manager the following reports:

- A. A report on the efficiency and effectiveness of all marketing, promotion, and campaigns/projects against the goals and objectives established for the campaign/project.
- B. Periodic written status reports and presentations as requested by the MWC and DNR. Status reports must summarize discussion highlights and action items resulting from meetings and projects.
- C. No later than two (2) months following the end of each media buy, a prepared final summary showing the amounts ordered and actually paid per station, publication or outdoor company must be available as requested by MWC and/or DNR. These summaries must be compiled by target group, by medium, by market, and showing a grand total. No-charge bonus or bonuses, or PSA schedules, must also be summarized quarterly in the same way.
- D. No later than two (2) months following the end of each media buy, post analysis reports which compare any such schedule estimates against actual spot rotation deliveries.
- E. No later than two (2) months following the end of each media buy, evaluation reports with supporting data, describing how the media buy accomplished the intended goals of the buy.
- F. Quarterly reports on social media activity and engagement.
- G. A quarterly report submitted to the Program Manager which has running tally of detailed budgeting usage for the Contract for the completed quarter (includes any

previous quarters reporting in addition to the current quarter). Document must use and align with Contract terminology and detail the following:

1. How much has been spent from each category associated with Schedule B Pricing.
  2. The invoice number that the value was listed on.
  3. The remaining budget for each category.
  4. Pass-through category must include the name of the vendor.
- H. Industry-accepted spending and budget reporting (e.g., quarterly estimate and approval prior to spending, budget reconciliation, postmortem campaign summaries, progress against goals)
- I. Any other related reports, or modifications to reports to include additional components or information, as requested by the MWC and/or DNR.
- J. The Contractor must maintain an up-to-date list in their quarterly reporting to the State of all mobile devices that are compatible with their Solution. Additionally, the Contractor must maintain an up-to-date list of features that can be performed via a mobile device in their quarterly reporting to the State.

## **5. Pricing**

### **5.1. Price Term**

Pricing is firm for the entire length of the Contract.

### **5.2. Price Changes**

Adjustments will be based on changes in actual Contractor costs. Any request must be supported by written evidence documenting the change in costs. The State may consider sources, such as the Consumer Price Index; Producer Price Index; other pricing indices as needed; economic and industry data; manufacturer or supplier letters noting the increase in pricing; and any other data the State deems relevant.

Following the presentation of supporting documentation, both parties will have 30 days to review the information and prepare a written response. If the review reveals no need for modifications, pricing will remain unchanged unless mutually agreed to by the parties. If the review reveals that changes are needed, both parties will negotiate such changes, for no longer than 30 days, unless extended by mutual agreement.

The Contractor remains responsible for Contract Activities at the current price for all orders received before the mutual execution of a Change Notice indicating the start date of the new Pricing Period.

## **6. Ordering**

### **6.1. Authorizing Document**

The appropriate authorizing document for the Contract will be a Delivery Order (DO).

## **7. Invoice and Payment**

## 7.1. Invoice Requirements

- A. The Contractor must provide detailed invoices for services rendered which clearly outline the scope of billing. The Contractor must provide complete backup with Contractor invoices including signed estimates and all original copies of third-party invoices. The Contractor must also provide reconciliation of all projects approved for pre-billing within one day at their completion (typically TV and radio). All invoices must reflect actual work done. Invoice and payment specificity will be agreed upon between the MWC, DNR and the Contractor.
  
- B. All invoices submitted to the State must include: (a) date; (b) purchase order; (c) quantity; (d) itemized description of the Contract Activities; (e) unit price; (f) shipping cost (if any); and (g) total price. (h) name(s) of person(s) who worked on project; (i) number of hours worked by each person. Overtime, holiday pay, and travel expenses will not be paid.
  1. Invoices must clearly distinguish the total cost where prompt payment terms apply, and the total cost where prompt payment does not apply, in addition to providing a grand total cost of invoice. This must be in alignment with terms on Schedule B, Pricing and is in addition to all other invoicing requirements indicated in the Contract.
  2. Invoices must be transparent in showing costs and using rates identified in Schedule B, Pricing.
  3. Media Placement fee and value must have its own line on the invoices, showing the percentage fee and dollar value. For placements where fee was negotiated in the paid media value, supporting documentation that the rate was utilized must be provided.
  4. Invoice content and format must comply with the invoice sample provided by the State.
  
- C. Invoices will be approved based upon completion of deliverables within a pre-approved Project Plan. Payments will be made upon approval of the MWC and DNR representatives.
  1. Primary research services:
    - a. Any primary research work performed by the Contractor and/or their subcontractor (if subcontractor applies) is subject to the Research rate identified on Schedule B, Pricing.
    - b. Any other primary research components/services (i.e. focus group facility rental, participant fees, surveys, phone bank cost, purchase of databases and email deployment fees), must be billed as a pass-through cost.

- D. The State will reimburse the Contractor only for services and/or materials authorized by the MWC and DNR and delivery order. Payment will not exceed the amount approved by authorized estimate without submission and approval of a revised estimate.
- E. The Contractor's out-of-pocket expenses are not separately reimbursable by the State unless, on a case-by-case basis for unusual expenses, the State has agreed in advance and in writing to reimburse Contractor for the expense at the State's current travel reimbursement rates. See [www.michigan.gov/dtmb](http://www.michigan.gov/dtmb) for current rates. Contractor travel, meals, and lodging to any location is not billable and will not be paid.
- F. The Contractor will not be reimbursed for personnel labor or other costs incurred in connection with client account services, meetings, commissionable advertising, or costs associated with membership in or attendance at industry conferences, seminars, etc. The Contractor will not be reimbursed for any overtime costs incurred by the Contractor or by any Subcontractor or supplier, unless such costs have been specifically identified in an approved work estimate.
- G. Expenses for packaging, handling, shipping, postage and freight, travel, meals, lodging and per diem paid to or on behalf of outside talent, and services acquired through the Contractor's internal facilities or parent or subsidiary organizations must be billed at cost. Additionally, the following items must also be billed at cost: talent renewals, licensing fees, television and radio dubs, and satellite and communications uplinks.
- H. The Contractor must pass on all reductions in cost, such as volume and early payment discounts, to the State, in the fiscal year in which the originating expenses occurred.
- I. The Contractor must make timely payments to all subcontractors without waiting for state payment of corresponding invoices. The Contractor must maintain a line of credit for this purpose.
- J. The Contractor must allow 45 days from the date of receipt of accurate and complete invoices and backup for receipt of payment.

## **7.2. Payment Methods**

The State will make payment for Contract Activities via Electronic Funds Transfer (EFT).

## **7.3. Procedure**

The Contractor must email invoices to the DNR Project Manager, MWC Chair, and Marketing and Outreach Division Financial Services Section Manager.

**8. Service-Level Agreement (SLA)**

**A.** The Contractor will be held accountable to meet the requirements and the service level requirements established in this Contract.

**Service Level Agreements for this Contract will be as follows:**

SLA Metric 1.	Campaign Plans
<b>Definition and Purpose</b>	The Contractor must carry out this Contract under the direction and control of the DNR/MWC. Within 10 calendar days of the Annual Campaign Meeting (section 4.2 above), the Contractor must submit annual campaign plan to the MWC/DNR for final approval.
<b>Acceptable Standard</b>	The acceptable standard is 100% compliance.
<b>Credit Due for Failing to Meet the Service Level Agreements</b>	<p>1. \$2500.00 may be assessed if Contractor fails to provide an annual campaign plan within 10 calendar days of the Annual Campaign Meeting.</p> <p>2. \$100.00 may be assessed each day the Contractor fails to provide a Project Plan.</p> <p>Extenuating circumstances will be reviewed by the Program Manager before any Service Credits are assessed.</p> <p>At the discretion of the State, these credits may be applied toward any payable due to the Contractor or be payable directly to the State. Payments made directly to the state will be completed within 10 days of notice of assessment.</p>

SLA Metric 2.	Reporting
<b>Definition and Purpose</b>	Any reporting or data requested by the DNR/MWC must be provided within the timeframes specified above in Section 4.3 Reporting.
<b>Acceptable Standard</b>	The acceptable standard is 100% compliance.
<b>Credit Due for Failing to Meet the Service Level Agreements</b>	<p>1. \$1000.00 may be assessed if Contractor fails to provide requested reporting or data within specified timeframes.</p> <p>2. \$100.00 may be assessed for each day the Contractor fails to remedy the late of improper completion of the Work.</p>

SLA Metric 2.	Reporting
	<p>Extenuating circumstances will be reviewed by the Program Manager before any Service Credits are assessed.</p> <p>At the discretion of the State, these credits may be applied toward any payable due to the Contractor or be payable directly to the State. Payments made directly to the state will be completed within 10 days of notice of assessment.</p>

## SCHEDULE B PRICING

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### Contract No. 24000001303

Marketing and Advertising Services for Michigan Wildlife Council Benefits of Hunting and Fishing Educational Media Campaign

1. Pricing must include all costs, including but not limited to, any one-time or set-up charges, fees, and potential costs that Contractor may charge the State (e.g., shipping and handling, per piece pricing, and palletizing).
2. The Contractor is encouraged to offer quick payment terms. The number of days must not include processing time for payment to be received by the Contractor's financial institution.

Quick payment terms: 1% discount off invoice if paid within 15 days after receipt of invoice.
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3. The Contractor certifies that the prices were arrived at independently, and without consultation, communication, or agreement with any other Contractor.
4. The State can only commit funds in the fiscal year they are available; commitment of funds for future fiscal years is contingent upon enactment of legislative appropriations.
5. All subcontracted work must be passed through at “cost” and include no mark-up of any kind: The State will not accept fees or commissions from subcontractors and suppliers, these Contractors shall be at a non-commissioned rate, no mark up. The Contractor must pass on all reductions in costs from subcontractors and suppliers. For paid media where media fee is calculated within the rate that will be invoiced from the media vendor, the Contractor must provide gross and net figures, and enough information to validate that the percentage rate agreed to was used.
6. This Contract is variable, fixed and commission-based pricing in accordance with Schedule A, Section 2. Acceptance and Section 7. Invoice and Payment. The Contractor is paid per approved project, not as a flat percentage or rate of the total annual budget estimate.

The State has the right to lower the agreed upon rate in the case the work is not performed by or has not been reviewed by the Key Personnel prior to submitted work to the State. This also applies if the Key Personnel assigned has not attended required meetings.

All overhead expenses of the Contractor must be included in the variable and fixed pricing.

The Contract’s estimated budget is \$4,200,000.00 with a fixed \$1,400,000.00 per year.

#### A. Campaign Management Services

1. A variable price based on a blended hourly rate will be used to compensate the Contractor for the following services:
  - a. Schedule A, Section 1.1.A, Communications/Marketing
  - b. Schedule A, Section 1.1.G.2 and 1.1.G.3 Additional Services

- c. Schedule A, Section 1.1.H Implementation (creative and production components of PR are subject to be billed under the Campaign Messaging and Implementation blended hourly rate)
- d. Schedule A, Section 4 Project Management, 4.1 Project Plan, 4.2 Meetings, and 4.3 Reporting.

**B. Research**

- 1. A fixed hourly rate will be used to compensate the Contractor for the following services:
  - a. Schedule A, Section 1.1.B, Market Research (primary and secondary)

**C. Campaign Messaging and Implementation**

- 1. A variable price based on a blended hourly rate will be used to compensate the Contractor for the following services:
  - a. Schedule A, Section 1.1.D Creative
  - b. Schedule A, Section 1.1.E Production
  - c. Schedule A, Section 1.1.F Website Management, Development, and Maintenance

**D. Paid Media**

- 1. A commission-based percentage fee will be used to compensate the Contractor for the following services:
  - a. Schedule A, Section 1.1.C Media

Deliverable	Price
<b>1. Digital Media Placement Services – Commission Percentage (Yearly Value of Media Placed)</b>	
a. \$1 to \$1,000,000	6%
<b>2. Optional Use Professional Services – Variable Blended Hourly Rate</b>	\$130/hr
<b>3. Account Management Fee</b>	\$50,934
<b>5. Creative Services Fee</b>	\$130/hr

\*Variable Blended Hourly Rate is defined as a not-to-exceed rate that will be paid to the Contractor for Creative Design, Production, Communications, Marketing, Research, Implementation, and Additional Services.

## SCHEDULE C – INSURANCE REQUIREMENTS

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### Contract No. 24000001303

Marketing and Advertising Services for Michigan Wildlife Council Benefits of Hunting and Fishing Educational Media Campaign

- 1. General Requirements.** Contractor, at its sole expense, must maintain the insurance coverage as specified herein for the duration of the Term. Minimum limits may be satisfied by any combination of primary liability, umbrella or excess liability, and self-insurance coverage. To the extent damages are covered by any required insurance, Contractor waives all rights against the State for such damages. Failure to maintain required insurance does not limit this waiver.
- 2. Qualification of Insurers.** Except for self-insured coverage, all policies must be written by an insurer with an A.M. Best rating of A- VII or higher unless otherwise approved by DTMB Enterprise Risk Management.
- 3. Primary and Non-Contributory Coverage.** All policies for which the State of Michigan is required to be named as an additional insured must be on a primary and non-contributory basis.
- 4. Claims-Made Coverage.** If any required policies provide claims-made coverage, Contractor must:
  - a. Maintain coverage and provide evidence of coverage for at least 3 years after the later of the expiration or termination of the Contract or the completion of all its duties under the Contract;
  - b. Purchase extended reporting coverage for a minimum of 3 years after completion of work if coverage is cancelled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Effective Date of this Contract.
- 5. Proof of Insurance.**
  - a. Insurance certificates showing evidence of coverage as required herein must be submitted to DTMB-RiskManagement@michigan.gov within 10 days of the contract execution date.
  - b. Renewal insurance certificates must be provided on annual basis or as otherwise commensurate with the effective dates of coverage for any insurance required herein.
  - c. Insurance certificates must be in the form of a standard ACORD Insurance Certificate unless otherwise approved by DTMB Enterprise Risk Management.
  - d. All insurance certificates must clearly identify the Contract Number (e.g., notated under the Description of Operations on an ACORD form).

- e. The State may require additional proofs of insurance or solvency, including but not limited to policy declarations, policy endorsements, policy schedules, self-insured certification/authorization, and audited financial statements.
- f. In the event any required coverage is cancelled or not renewed, Contractor must provide written notice to DTMB Enterprise Risk Management no later than 5 business days following such cancellation or nonrenewal.

**6. Subcontractors.** Contractor is responsible for ensuring its subcontractors, if any, carry and maintain insurance coverage as applicable to the subcontracted service(s).

**7. Limits of Coverage & Specific Endorsements.**

Required Limits	Additional Requirements
<b>Commercial General Liability Insurance</b>	
<b>Minimum Limits:</b> <b>\$1,000,000 Each Occurrence</b> <b>\$1,000,000 Personal &amp; Advertising Injury</b> <b>\$2,000,000 Products/Completed Operations</b> <b>\$2,000,000 General Aggregate</b>	Contractor must have their policy endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds using endorsement CG 20 10 11 85, or both CG 20 10 12 19 and CG 20 37 12 19.
<b>Automobile Liability Insurance</b>	
<b>If a motor vehicle is used in relation to the Contractor's performance, the Contractor must have vehicle liability insurance on the motor vehicle for bodily injury and property damage as required by law.</b>	
<b>Workers' Compensation Insurance</b>	
<b>Minimum Limits:</b> <b>Coverage according to applicable laws governing work activities.</b>	Waiver of subrogation, except where waiver is prohibited by law.
<b>Employers Liability Insurance</b>	
<b>Minimum Limits:</b> <b>\$500,000 Each Accident</b> <b>\$500,000 Each Employee by Disease</b> <b>\$500,000 Aggregate Disease</b>	

**8. Notice of Non-Compliance.** Contractor consents to receiving electronic communications from a third-party service provider, Origami Risk, for the exclusive purpose of notifying Contractor of non-compliance with the requirements set forth in this Schedule C.

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

## SCHEDULE D – SERVICE LEVEL AGREEMENT FOR HYBRID PURCHASES

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**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 2.1**.

“**Availability Requirement**” has the meaning set forth in **Section 2.1**.

“**Available**” has the meaning set forth in **Section 2.1**.

“**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 3.9**.

“**Critical Service Error**” has the meaning set forth in **Section 2.4**.

“**Exceptions**” has the meaning set forth in **Section 2.2**.

“**High Service Error**” has the meaning set forth in **Section 2.4**.

“**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.

“**Low Service Error**” has the meaning set forth in **Section 2.4**.

“**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.

“**Medium Service Error**” has the meaning set forth in **Section 2.4**.

“**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.

**“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).

**“Resolve”** has the meaning set forth in **Section 2.4**.

**“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 2.3**.

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

**“Service Availability Credits”** has the meaning set forth in **Section 2.6(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 3.8**.

**“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 2.1**.

**“Software Support Services”** has the meaning set forth in **Section 3**.

**“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 8:00 a.m. – 5:00 p.m. EST

**“Support Request”** has the meaning set forth in **Section 3.5**.

**“Support Service Level Requirements”** has the meaning set forth in **Section 3.4**.

## **2. Service Availability and Service Availability Credits.**

**2.1. Availability Requirement.** Contractor will make the Hosted Services and Software Available, as measured over the course of each calendar month during the Term and any additional periods during which Contractor does or is required to perform any Hosted Services (each such calendar month, a **“Service Period”**), at least 99.98% of the time, excluding only the time the Hosted Services are not Available solely as a result of one or more Exceptions (the **“Availability Requirement”**).

“**Available**” means the Hosted Services and Software are available and operable for access and use by the State and its Authorized Users over the Internet in material conformity with the Contract. “**Availability**” has a correlative meaning. The Hosted Services and Software are not considered Available in the event of a material performance degradation or inoperability of the Hosted Services and Software, in whole or in part. The Availability Requirement will be calculated for the Service Period as follows:  $(\text{Actual Uptime} - \text{Total Minutes in Service Period Hosted Services or Software are not Available Due to an Exception}) \div (\text{Scheduled Uptime} - \text{Total Minutes in Service Period Hosted Services or Software are not Available Due to an Exception}) \times 100 = \text{Availability}$ .

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

- (a) Failures of the State’s or its Authorized Users’ internet connectivity;
- (b) Scheduled Downtime as set forth in **Section 2.3**.

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

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

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

**2.6 Remedies for Service Availability Failures.**

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

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

- (b) Any Service Availability Credits due under this **Section** 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 3**. 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:

- (b) correct all Service Errors in accordance with the Support Service Level Requirements, including by providing defect repair, programming corrections and remedial programming;
- (c) provide unlimited telephone support during **Support Hours**;
- (d) provide unlimited online support 24 hours a day, seven days a week;
- (e) 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
- (f) respond to and Resolve Support Requests as specified in this **Section**.

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

- (a) proactively monitoring on a twenty-four (24) hour by seven (7) day basis all Hosted Service functions, servers, firewall and other components of Hosted Service security;
- (b) if such monitoring identifies, or Contractor otherwise becomes aware of, any circumstance that is reasonably likely to threaten the Availability of the Hosted Service, taking all necessary and reasonable remedial measures to promptly eliminate such threat and ensure full Availability; and
- (c) if Contractor receives knowledge that the Hosted Service or any Hosted Service function or component is not Available (including by written notice from the State pursuant to the procedures set forth herein):
  - (i) confirming (or disconfirming) the outage by a direct check of the associated facility or facilities;
  - (ii) If Contractor’s facility check in accordance with clause (i) above confirms a Hosted Service outage in whole or in part: (A) notifying the State in writing pursuant to the procedures set forth herein that an outage has occurred, providing such details as may be available, including a Contractor trouble ticket number, if appropriate, and time of outage; and (B) working all problems causing and caused by the outage until they are Resolved as Critical Service Errors in accordance with the Support Request Classification set forth in **Section 3.5** and **3.6**, or, if determined to be an internet provider problem, open a trouble ticket with the internet provider; and
  - (iii) Notifying the State that Contractor has fully corrected the outage and any related problems, along with any pertinent findings or action taken to close the trouble ticket.

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

- (a) all updates, bug fixes, enhancements, Maintenance Releases, New Versions and other improvements to the Hosted Services and Software, including the Software, that Contractor provides at no additional charge to its other similarly situated customers; provided that Contractor shall consult with the State and is required to receive State approval prior to modifying or upgrading Hosted Services and Software, including Maintenance Releases and New Versions of Software; and
- (b) all such services and repairs as are required to maintain the Hosted Services and Software or are ancillary, necessary or otherwise related to the State’s or its Authorized Users’ access to or use of the Hosted Services and Software, so that the Hosted Services and Software operate properly in accordance with the Contract and this Schedule.

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

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

<b>Support Request Classification</b>	<b>Description: Any Service Error Comprising or Causing any of the Following Events or Effects</b>
Critical Service Error	<ul style="list-style-type: none"> <li>• Issue affecting entire system or single critical production function;</li> <li>• System down or operating in materially degraded state;</li> <li>• Data integrity at risk;</li> <li>• Declared a Critical Support Request by the State; or</li> <li>• Widespread access interruptions.</li> </ul>
High Service Error	<ul style="list-style-type: none"> <li>• Primary component failure that materially impairs its performance; or</li> <li>• Data entry or access is materially impaired on a limited basis.</li> </ul>
Medium Service Error	<ul style="list-style-type: none"> <li>• 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.</li> </ul>
Low Service Error	<ul style="list-style-type: none"> <li>• Request for assistance, information, or services that are</li> </ul>

<b>Support Request Classification</b>	<b>Description:</b>  <b>Any Service Error Comprising or Causing any of the Following Events or Effects</b>
	routine in nature.

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

<b>Support Request Classification</b>	<b>Service Level Metric (Required Response Time)</b>	<b>Service Level Metric (Required Resolution Time)</b>	<b>Service Level Credits (For Failure to Respond to any Support Request Within the Corresponding Response Time)</b>	<b>Service Level Credits (For Failure to Resolve any Support Request Within the Corresponding Required Resolution Time)</b>
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	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

<b>Support Request Classification</b>	<b>Service Level Metric (Required Response Time)</b>	<b>Service Level Metric (Required Resolution Time)</b>	<b>Service Level Credits (For Failure to Respond to any Support Request Within the Corresponding Response Time)</b>	<b>Service Level Credits (For Failure to Resolve any Support Request Within the Corresponding Required Resolution Time)</b>
			within the required response time.	remains un-Resolved, which amount will thereafter double for each additional one-hour increment.
High Service Error	One (1) hour	Four (4) hours	Three percent (3%) of the Fees for the month in which the initial Service Level Failure begins and three percent (3%) of such monthly Fees for each additional hour or portion thereof that the corresponding Service Error is not responded to within the required response time.	Three percent (3%) of the Fees for the month in which the initial Service Level Failure begins and three percent (3%) of such monthly Fees for the first additional hour or portion thereof that the corresponding Service Error remains un-Resolved, which amount will thereafter double for each additional one-hour increment.

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)
Medium Service Error	Three (3) hours	Two (2) Business Days	N/A	N/A
Low Service Error	Three (3) hours	Five (5) Business Days	N/A	N/A

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

**3.8 Support Service Level Credits.** Failure to achieve any of the Support Service Level Requirements for Critical and High Service Errors will constitute a Service Level Failure for which Contractor will issue to the State the corresponding service credits set forth in **Section 3.6 (“Service Level Credits”)** in accordance with payment terms set forth in the Contract.

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

programming, software updates, fixes, patches, etc. necessary to remedy, and prevent any further occurrences of, such Service Errors; and (c) time frames for implementing the Corrective Action Plan. There will be no additional charge for Contractor’s preparation or implementation of the Corrective Action Plan in the time frames and manner set forth therein.

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

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

**4.3 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.

**4.4 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.

**4.5 Disaster Recovery.** Throughout the Term and at all times in connection with its actual or required performance of the Services, Contractor will maintain and operate a backup and disaster recovery plan to achieve a Recovery Point Objective (RPO) of 24 hours, and a Recovery Time Objective (RTO) of 24 hours (the “**DR Plan**”), and implement such DR Plan in the event of any unplanned interruption of the Hosted Services. Contractor’s current DR Plan, revision history, and any reports or summaries relating to past testing of or pursuant to the DR Plan are included or attached as described in **Schedule A** under **Hosting**. Contractor will actively test, review and update the DR Plan on at least an annual basis using industry best practices as guidance. Contractor will provide the State with copies of all such updates to the Plan within fifteen (15) days of its adoption by Contractor. All updates to the DR Plan are subject to the requirements of this

**Section 3;** and provide the State with copies of all reports resulting from any testing of or pursuant to the DR Plan promptly after Contractor's receipt or preparation. If Contractor fails to reinstate all material Hosted Services and Software within the periods of time set forth in the DR Plan, the State may, in addition to any other remedies available under this Contract, in its sole discretion, immediately terminate this Contract as a non-curable default.

## SCHEDULE E – DATA SECURITY REQUIREMENTS FOR HYBRID PURCHASES

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**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.

“**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.

“**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 [DTMB - IT Policies, Standards & Procedures \(michigan.gov\)](https://www.michigan.gov/DTMB-IT-Policies-Standards-Procedures).

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

**4. Acceptable Use Policy.** To the extent that Contractor has access to the State's IT environment, Contractor must comply with the State's Acceptable Use Policy, see [1340.00.130.02 Acceptable Use of Information Technology \(michigan.gov\)](https://www.michigan.gov/1340.00.130.02-Acceptable-Use-of-Information-Technology). All Contractor Personnel will be required, in writing, to agree to the State's Acceptable Use Policy before accessing State systems. The State reserves the right to terminate Contractor's and/or subcontractor(s) or any Contractor Personnel's access to State systems if the State determines a violation has occurred.

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

- 5.1** If Hosted Services are provided by a Hosting Provider, ensure each Hosting Provider maintains FedRAMP authorization for all Hosted Services environments throughout the Term, and in the event a Hosting Provider is unable to maintain FedRAMP authorization, the State, at its sole discretion, may either a) require the Contractor

to move the Software and State Data to an alternative Hosting Provider selected and approved by the State at Contractor's sole cost and expense without any increase in Fees, or b) immediately terminate this Contract for cause pursuant to **Section 25** of the Contract;

- 5.2** 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 stored, hosted, supported, administered, accessed, developed, and backed up in the continental United States, and the data center(s) in which the data resides minimally meet Uptime Institute Tier 3 standards ([www.uptimeinstitute.com](http://www.uptimeinstitute.com)), or its equivalent;
- 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 Contract Activities 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 Contract Activities; (ii) State Data from being commingled with or contaminated by the data of other

customers or their users of the Contract Activities; 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 and required evidence based on the risk level of the identified risk. For all findings associated with the Contractor's solution, at no additional cost, Contractor will be required to create or assist with the creation of State approved POAMs, perform related remediation activities, and provide evidence of compliance. The State will make any decisions on acceptable risk, Contractor may request risk acceptance, supported by compensating controls, however only the State may formally accept risk. Failure to comply with this section will be deemed a material breach of the Contract.

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

## **8. Security Audits.**

- 8.1** During the Term, Contractor will maintain complete and accurate records of its data protection practices, IT security controls, and the security logs relating to State Data, 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 Contract Activities 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 and 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 with 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 with 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 with a vulnerability assessment after Contractor has completed the required scans if not provided as part of SAST and/or DAST reporting.

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

- (a)** If provided as part of the solution, all native mobile application software must meet these scanning requirements including any interaction with an application programming interface (API).
- (b)** Penetration Testing – Simulated attack on the application and infrastructure to identify security weaknesses.

## **10. Infrastructure Scanning.**

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

**11. Nonexclusive Remedy for Security Breach.** Any failure of the Contract Activities to meet the requirements of this Schedule with respect to the security of any State Data or other Confidential Information of the State, including any related backup, disaster recovery or other policies, practices or procedures, is a material breach of the Contract for which the State, at its option, may terminate the Contract 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.