



STATE OF MICHIGAN PROCUREMENT
 Michigan Department of Treasury
 7285 Parsons Dr., Dimondale, MI 48821

CONTRACT CHANGE NOTICE

Change Notice Number **3**
 to
 Contract Number **220000001175**

CONTRACTOR	Dividex Management LLC
	One University Ave., Ste 301 (c)
	Westwood, MA 02090
	Irwin Schwartz
	781-636-5075
	ischwartz@dividexmanagement.com
	VS0238969

STATE	Program Manager	Jeannette Brya	TREAS
		517-604-8243	
	BryaJ@michigan.gov		
	Contract Administrator	Andrew Shaver	TREAS
517-420-5328			
ShaverA@Michigan.gov			

CONTRACT SUMMARY				
DESCRIPTION: Security Litigation Monitoring Services				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
July 27, 2022	July 26, 2025	Two (2), One (1) option period(s)	July 26, 2025	
PAYMENT TERMS		DELIVERY TIMEFRAME		
Net 45		N/A		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other			<input 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 checked="" type="checkbox"/>	2, 1 Year Options	<input type="checkbox"/>		July 26, 2027
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$533,500.00		\$430,000.00	\$963,500.00	
DESCRIPTION: Effective April 8, 2025, the statement of work for Security Litigation Consulting services is added to the contract. Security Litigation Consulting services will be performed through a subcontractor of Dividex Management LLC., under the entity BLA Schwartz.				
Effective April 8, 2025, a pricing table for Securities Litigation Consulting services is added to Schedule B – Pricing. Exhibit A – Securities Litigation Policy is added to the contract.				

All other terms, conditions, specifications, and pricing remain the same.

CHANGE NOTICE NO. 3 TO CONTRACT NO. 220000001175

FOR THE CONTRACTOR:

DIVIDEX Management LLC

Company Name

Authorized Agent Signature

Irwin Schwartz, President

Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature

Julie Collins, Purchasing Manager

Name & Title

Dept. of Treasury

Agency

Date

SCHEDULE A - STATEMENT OF WORK

CONTRACT ACTIVITIES

Scope

This Change Notice is for Securities Litigation Consulting Services, which is a key component of the State of Michigan Retirement System's (SMRS) overall Securities Litigation Policy. Securities litigation, both foreign and domestic, is used to recover money where the SMRS has realized damages and other losses due to securities fraud committed by companies within its investment portfolio. The SMRS as an institutional investor has a responsibility to identify and evaluate securities litigation actions in which it has an interest and, where eligible, to participate in the recovery in securities class action litigation. The SMRS views securities claims as assets, which are managed with the goal of maximizing total recovery. The Securities Litigation Consulting Services and their effective implementation are instrumental in achieving this goal.

Disclosure of Subcontractors

The following subcontractor will be utilized for Security Litigation Consulting:

Contractor must provide detailed information as requested in the above requirement(s).	
The legal business name, address, telephone number of the subcontractor(s).	BLA Schwartz PC 1 University Ave; Westwood, MA 02090 781-636-5000
A description of subcontractor's organization and the services it will provide and information concerning subcontractor's ability to provide the Contract Activities.	BLA Schwartz PC is a law firm with a specialized securities litigation advisory practice. BLA Schwartz PC has extensive experience providing services similar to those described in Contract Change Notice for numerous public pension funds.
The relationship of the subcontractor to the Contractor.	BLA Schwartz PC is a Massachusetts Professional Corporation with some common ownership with DIVIDEX Management LLC, a Delaware Limited Liability Company. Irwin Schwartz is the Principal of BLA Schwartz and the President of DIVIDEX Management LLC. William Adams is cross-designated as an employee of both organizations.
Whether the Contractor has previous working experience with the subcontractor. If yes, provide the details of that previous relationship.	BLA Schwartz PC and DIVIDEX Management LLC work together to provide fiduciary securities litigation advice and informational services across a client group that includes several public pension funds and other institutional investors.

Contractor must provide detailed information as requested in the above requirement(s).	
A complete description of the Contract Activities that will be performed or provided by the subcontractor.	See General Requirements below.
Of the total bid, the price of the subcontractor's work.	See Schedule B.

General Requirements

1. The subcontractor must:
 - a. Not serve as the Evaluation Consultant and Litigation Counsel for the State of Michigan or State of Michigan Retirement System (SMRS), as those terms are defined in the SMRS's Securities Litigation Policy (See Exhibit A).
 - b. Evaluate on a timeline as agreed with SMRS proposals for contingency fee agreements with class counsel and any proposals for settlement.
 - c. Provide consulting services regarding whether SMRS should pursue active participation in a Securities Litigation case brought pursuant to the Private Securities Litigation Reform Act of 1995. (Active participation includes lead plaintiff, co-lead plaintiff and "opting-out" to pursue direct action independent of the class action suit.). Such consulting services shall include:
 - i. Provide likelihood that other institutional investors will serve as lead plaintiff, or will join with the SMRS in seeking lead plaintiff status,
 - ii. Assess the probability that the SMRS could successfully seek lead plaintiff status,
 - iii. Estimate the cost to the SMRS of active participation in a securities case in terms of staff time and expenditures.
 - iv. Provide factual and legal merits of the claims; and
 - v. Calculate damages multiple ways to determine "lead plaintiff" feasibility.
 - d. Provide consulting services and preparation of BOI Staff for litigation functions (discovery and testimony).
 - e. In Securities Litigation cases in which SMRS is a Lead Plaintiff, brought an independent action, or otherwise becomes an active litigant:
 - i. Aid in monitoring the Securities Litigation case(s),

- ii. Aid in the supervision of lead or outside counsel,
 - iii. Monitor the progress of the case to identify any developments, which may affect the fund and its ability to recover any losses, or which may offer additional opportunities such as opting out of the class litigation and pursuing a direct action, either alone or jointly with other funds,
 - iv. Review case settlements and attorney fee requests and recommend objections and/or corporate governance/securities litigation changes on behalf of SMRS.
 - f. Recommend corporate governance changes in Securities Class Action and Securities Case settlements in which SMRS has suffered damages.
 - g. Advise on requests to file amicus briefs or supporting declarations in securities cases and assist in preparation as requested by SMRS.
 - h. Provide assistance in developing a litigation policy and related procedures.
2. The subcontractor must submit the following status reports:
- a. In addition to the monthly report provided by DIVIDEX Management, LLC, provide the Program Manager with a monthly verbal report by telephone summarizing of progress which outline the work accomplished during the reporting period; work to be accomplished during the subsequent reporting period; problems, real or anticipated, which should be brought to the attention of the SMRS; and notification of any significant deviation from previously agreed-upon work plans.
 - b. Upon request, provide the Program Manager, within five business days, with a report that provides a synopsis of the activities that are required pursuant to the Contract.

SCHEDULE B - PRICING

Securities Litigation Consulting Services					
Year 1 7/27/22- 7/26/23	Year 2 7/27/23- 7/26/24	Year 3 7/27/24- 7/26/25	Grand Total	Option Year 1	Option Year 2
N/A	N/A	\$30,000	\$30,000	\$32,000	\$32,000

EXHIBT A – SECURITIES LITIGATION POLICY

SECURITIES LITIGATION POLICY

State of Michigan Retirement System

PURPOSE

The purpose of this Securities Litigation Policy (“Policy”) is to establish guidelines and processes that the Bureau of Investments (“BOI”), acting on behalf of the State of Michigan Investment Board (“Board”), shall follow when evaluating and managing securities class action litigation and related claims as an asset of the retirement funds and also those trusts and agencies where the Board is granted investment discretion.

OBJECTIVES

The Board’s principal objective with respect to securities litigation is to fulfill its fiduciary duties to the State of Michigan Retirement System (“SMRS”) by (i) actively monitoring securities litigation, (ii) evaluating and identifying potential cases, (iii) monitoring proof of claim filing deadlines, and (iv) ensuring that proofs of claim are timely filed; each, in turn, will allow the SMRS to treat securities claims as assets of the SMRS with the ultimate goal of maximizing recovery on a given matter while minimizing fees paid to obtain such recoveries.

Procedures that implement this Policy are maintained by the BOI’s Chief Compliance Officer and General Counsel (CCO) and the staff of Compliance and Corporate Governance Division (CCGD).

SCOPE

This Policy shall apply to the defined benefit funds managed by the Board as the investment fiduciary for the defined benefit plans of the SMRS.

STATEMENT

The effective management of securities class action strategy requires evaluation of potential cases and monitoring of proof of claim filings. Fulfilling these objectives requires the use of a securities fraud litigation monitoring service (Monitoring Firm) and independent evaluation consultant (Evaluation Consultant). If SMRS pursues an active role in any litigation, whether as lead plaintiff in a class or otherwise, the SMRS will seek appointment of litigation counsel (Litigation Counsel). SMRS may also seek the use of other service providers as it deems necessary.

To preserve the legitimacy of the process surrounding securities litigation activities, and SMRS role within these activities, certain limitations are placed on those that serve in the roles of Monitoring Firm, Evaluation Consultant, and Litigation Counsel. Any service provider is prohibited from handling more than one role in the process described in this process. As described immediately above, the roles are generally broken down into: monitoring, independent consultant, and representation in litigation. By way of example, this means that a service provider cannot serve both as Monitoring Firm and Litigation Counsel; likewise, Litigation Counsel cannot serve as Evaluation Consultant or otherwise evaluate the merits of the case or recommend a course of action to SMRS prior to formal appointment as Litigation Counsel.

As a matter of policy, the SMRS endeavors to participate in the recovery of all class action cases pending within the United States under U.S. federal securities laws where the SMRS is eligible to participate by timely filing a proof of claim. The SMRS may pursue a more active role in litigation if doing so fulfills the Board's fiduciary duty to act in the best interest of the State of Michigan's retired public-school employees, state employees, judges, and state police and their respective beneficiaries.

MONITORING SECURITIES CLASS ACTION CASES

The Monitoring Firm is retained to monitor securities litigation filings and cases involving securities owned by the SMRS. The Monitoring Firm is granted direct access to relevant securities information through SMRS' custodian bank to allow the firm to identify potential class action matters. No other securities litigation vendor shall be granted direct access to this holding information or other trading data. The Monitoring Firm is responsible for providing information to the SMRS in the form and scope necessary to allow the BOI to determine whether the SMRS is an eligible class member of a given action.

The Monitoring Firm will also provide an estimate of SMRS' potential recoverable damages based on the price drop after the end of the class period, the number of shares held at the beginning of the class period, and the number of shares purchased and sold during the class period. Damages are computed on a total trust fund basis for each covered security, unless otherwise required.

The Monitoring Firm sends the BOI real-time updates when a class action has been filed, when a settlement has been reached, and when a proof of claim filing is due. The CCGD actively reviews all notifications when received and promptly runs a class period holdings report to verify whether the SMRS was a shareholder during the class period and the amount of damages incurred. The CCGD tracks cases where the SMRS may have a valid claim.

No additional analysis is required unless the potential U.S. claim exceeds the SMRS' high damage threshold of \$35 million or appears to constitute one of the largest claims of all potential class members. In these cases, the CCO may obtain a copy of the complaint and publicly available information on other large shareholders to identify other class members.

EVALUATING AND IDENTIFYING POTENTIAL U.S. CASES

Claims identified as requiring further evaluation are sent to the Evaluation Consultant, which will be an experienced securities fraud evaluation consultant retained specifically to evaluate claims and advise the BOI on options for managing claims recoveries. To prevent bias, the Evaluation Consultant cannot provide the same function as the Monitoring Firm nor is the Evaluation Consultant eligible to be considered for lead counsel. The same general process and standards are used to evaluate each claim, as well as to determine and implement an appropriate management strategy, regardless of how the case is identified.

Following evaluation of all relevant criteria, Evaluation Consultant shall provide the CCO with a confidential written analysis of the strengths and weaknesses of the case that includes a recommendation on the most cost-effective options for managing the claim. All things being equal, the Evaluation Consultant's recommendation shall be a determinative factor in whether the SMRS seek will seek appointment as lead plaintiff.

For those claims that require, the Evaluation Consultant will be expected to perform additional due diligence and examine reasonable options for protecting SMRS' interests. It is intended that the analysis will be focused on strategies that are likely to produce the greatest risk/reward benefits in a cost-effective manner.

As earlier stated, the primary responsibility for notifying the BOI of all relevant data related to securities class action litigation rests with the Monitoring Firm. However, the CCO, the Department of Attorney General (Attorney General), Evaluation Consultant, and SMRS' custodian bank may also identify cases brought or pending within the United States where the SMRS may have a claim.

Shareholder Derivative Actions

The SMRS may initiate or participate in a shareholder derivative action where the subject company is not pursuing claims it has against third parties if the SMRS and/or other shareholders would benefit from those claims. The process of evaluating derivative actions will involve the Evaluation Consultant to provide an analysis, due diligence, and recommendation in the same manner that it performs for securities class action matters.

APPOINTMENT OF COUNSEL

When reviewing Evaluation Consultant's confidential written analysis, the BOI shall consider the staffing resources of the BOI and how the recommended course of action may interfere with the Board's fiduciary duty to the members of the retirement system. Input from the Board, BOI Chief Investment Officer (CIO), CCO, Attorney General, and BOI Investment Personnel may be solicited when it has been determined that the SMRS has a substantial claim and is considering an active role in the subject litigation.

The SMRS may seek appointment as lead plaintiff where it can be demonstrated that SMRS is in the best position to represent all members of the class and that in doing so, the SMRS will be acting in the best interest of the members of the retirement system. The BOI shall work in conjunction with the Attorney General's office to identify potential law firms as candidates that may be in the best position to represent both the SMRS and the class for appointment as Litigation Counsel. Neither the Monitoring Firm nor the Evaluation Consultant can serve as Litigation Counsel.

The process of selecting Litigation Counsel shall be conducted in a way to demonstrate to the court and other class members that the appointed Litigation Counsel was selected based on that firm's merits, experience, and expertise or familiarity with the specific issues presented in the case at hand. Consideration shall also be given to past practices of the firm that reflect on integrity or client loyalty. Selection and use of any local counsel or co-counsel by Litigation Counsel must first be approved by SMRS and the Attorney General. Use of multiple co-counsel is appropriate only in complex, costly, or difficult litigation where it will not unnecessarily increase class fees or costs.

Upon the SMRS' appointment as lead plaintiff, BOI Investment Personnel shall be directed to preserve all evidence related to the ongoing litigation. Additionally, the lawsuit and performance of counsel must be monitored to ensure the SMRS fulfills its fiduciary duties to the class and the members of the SMRS. Litigation Counsel and the SMRS shall agree on reporting and approval procedures designed to ensure that the SMRS is able to effectively perform its responsibilities as lead plaintiff. All copies of major pleadings, lead counsel status reports, and other relevant communications concerning the case shall be shared with the SMRS and Attorney General. The

SMRS may obtain assistance from the Evaluation Consultant in monitoring the litigation if the SMRS deems necessary.

Attorney compensation and settlement

Active participation in securities litigation, whether as lead plaintiff for a class or otherwise, is driven in large part by the selection and compensation of lead counsel and evaluation of settlement offers. In that regard, the SMRS generally seeks to structure lead counsel's compensation in a way that aligns interests of the class and counsel. This is best achieved by structuring the arrangement so that fees are aligned with the recovery, mitigating the likelihood that counsel will pursue meritless litigation. In all cases, the SMRS believes a maximum fee cap should be mutually agreed upon. All fee agreements shall include language providing for approval of the final fee request, as reasonable under the circumstances, by both the Board and the Attorney General prior to court submission. The Board and the Attorney General may approve a change in a fee agreement at a later stage in the litigation if circumstances change such that the fee schedule is disadvantaging the class. Unless expressly authorized by the Board or the BOI, or by the Attorney General, a materially significant portion of the legal fee payment must be withheld from counsel until the final settlement fund distribution to class members.

The Attorney General's approval is required for any court settlement involving a State of Michigan entity. Therefore, both the Board and the Attorney General must mutually agree on any settlement.

EVALUATING AND IDENTIFYING POTENTIAL FOREIGN CASES

Unlike U.S. securities actions where information is made available through the Securities Class Action Clearinghouse, no such clearinghouse exists for foreign litigation. As with domestic cases, the BOI relies on its Monitoring Firm to identify the cases. The Monitoring Firm and Evaluation Consultant are used to evaluate the merits of participating in foreign securities litigation cases.

Foreign litigation is an evolving field of practice that presents a bevy of additional concerns that investment fiduciaries must weigh. These complex arrangements often involve a litigation funder that finances the litigation and legal counsel that litigates the case and generally require retainer agreements with both the litigation funder and legal counsel. Prime consideration must also be given to adverse party risks such as "loser pay" jurisdictions where the prevailing party is awarded attorney fees by the losing party. Because these lawsuits are inherently higher risk, a higher litigation threshold of \$45 million of recoverable damages must be met before the SMRS will participate in foreign securities litigation.

PROOF OF CLAIM FILINGS

The SMRS' current contract with its custodian bank obligates the custodian bank to timely file all proof of claim filings for actions pending in U.S. courts on behalf of the SMRS in all actions involving securities held on behalf of SMRS. The CCGD regularly audits the timely and effective filing of proofs of claim. Presently, the custodian bank forwards all information it receives regarding foreign securities class actions to the BOI for review. With foreign actions, the BOI, in consultation with Monitoring Firm, must decide at the onset if it wishes to participate in the litigation. The BOI will evaluate whether participating in these lawsuits is in the best interest of the SMRS' members.



STATE OF MICHIGAN PROCUREMENT
 Michigan Department of Treasury
 7285 Parsons Dr., Dimondale, MI 48821

CONTRACT CHANGE NOTICE

Change Notice Number **2**
 to
 Contract Number **220000001175**

CONTRACTOR	Dividex Management LLC
	One University Ave., Ste 301(c)
	Westwood, MA 02090
	Irwin Schwartz
	781-636-5075
	ischwartz@dividexmanagement.com
	VS0238969

STATE	Program Manager	Jeannette Brya	TREAS
		517-604-8243	
		bryaj@michigan.gov	
STATE	Contract Administrator	Kyle Elzinga	TREAS
		517-614-0956	
		ElzingaK1@michigan.gov	

CONTRACT SUMMARY				
DESCRIPTION: Security Litigation Monitoring Services				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
July 27, 2022	July 26, 2025	Two (2) additional one (1) year period(s)	July 26, 2025	
PAYMENT TERMS		DELIVERY TIMEFRAME		
NET45		N/A		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (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	
\$533,500.00		\$0	\$533,500.00	
DESCRIPTION:				
1.) The Program Manager is changed to Jeannette Brya. All other terms, conditions, specifications, and pricing remain the same.				

FOR THE CONTRACTOR:

Company Name

E-SIGNED by Irwin Schwartz
on 2024-01-10 15:56:09 EST

Authorized Agent Signature

Irwin Schwartz

Authorized Agent (Print or Type)

2024-01-10 15:56:09 UTC

Date

FOR THE STATE:

E-SIGNED by Kyle Elzinga
on 2024-01-10 15:56:46 EST

Signature

Kyle Elzinga, Department Analyst

Name & Title

Department of Treasury

Agency

2024-01-10 15:56:46 UTC

Date



STATE OF MICHIGAN PROCUREMENT
 Michigan Department of Treasury
 7285 Parsons Dr., Dimondale, MI 48821

CONTRACT CHANGE NOTICE

Change Notice Number **1**
 to
 Contract Number **220000001175**

CONTRACTOR	Dividex Management LLC
	One University Ave., Ste 301(c)
	Westwood, MA 02090
	Irwin Schwartz
	781-636-5075
	ischwartz@dividexmanagement.com
	VS0238969

STATE	Program Manager	Karl Borgquist	TREAS
		517-230-8419	
		borgquistk@michigan.gov	
STATE	Contract Administrator	Kyle Elzinga	TREAS
		517-614-0956	
		ElzingaK1@michigan.gov	

CONTRACT SUMMARY				
DESCRIPTION: Security Litigation Monitoring Services				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
July 27, 2022	July 26, 2025	Two (2) additional one (1) year period(s)	July 26, 2025	
PAYMENT TERMS		DELIVERY TIMEFRAME		
NET45		N/A		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (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	
\$316,000.00		\$217,500.00	\$533,500.00	
DESCRIPTION:				
1.) Effective September 6, 2023, \$217,500.00 is added to the contract. All other terms, conditions, specifications, and pricing remain the same.				

FOR THE CONTRACTOR:

Company Name

E-SIGNED by Irwin Schwartz
on 2023-09-05 17:39:25 EDT

Authorized Agent Signature

Irwin Schwartz

Authorized Agent (Print or Type)

2023-09-05 17:39:25 UTC

Date

FOR THE STATE:

E-SIGNED by Kyle Elzinga
on 2023-09-06 08:50:50 EDT

Signature

Kyle Elzinga, Department Analyst

Name & Title

Department of Treasury

Agency

2023-09-06 08:50:50 UTC

Date



STATE OF MICHIGAN PROCUREMENT
 Michigan Department of Treasury
 7285 Parsons Dr., Dimondale, MI 48821

NOTICE OF CONTRACT

NOTICE OF CONTRACT NO. **220000001175**
 between
 THE STATE OF MICHIGAN
 and

CONTRACTOR	Dividex Management LLC
	One University Ave., Ste 301(c)
	Westwood, MA 02090
	Irwin Schwartz
	781-636-5075
	ischwartz@dividexmanagement.com
	VS0238969

STATE	Program Manager	Karl Borgquist	TREAS
		517-230-8419	
	borgquistk@michigan.gov		
	Contract Administrator	Kyle Elzinga	TREAS
517-614-0956			
ElzingaK1@michigan.gov			

CONTRACT SUMMARY			
DESCRIPTION: Security Litigation Monitoring Services			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
July 27, 2022	July 26, 2025	Two (2), One (1) option period(s)	July 26, 2025
PAYMENT TERMS		DELIVERY TIMEFRAME	
Net 45		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
N/A			
MISCELLANEOUS INFORMATION			
N/A			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION			\$316,000.00

FOR THE CONTRACTOR:

Company Name

Authorized Agent Signature

Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature

Kyle Elzinga, Department Analyst

Name & Title

Department of Treasury

Agency

Date

SCHEDULE A – STATEMENT OF WORK CONTRACT ACTIVITIES

Security Litigation Monitoring Services

BACKGROUND

The State of Michigan Investment Board (Board) is investment fiduciary for the State of Michigan Retirement System (SMRS), which is comprised of the following component systems: Michigan Public School Employees' Retirement System; State Employees' Retirement System; Michigan State Police Retirement System; and Michigan Judges Retirement System. The State Treasurer of the State of Michigan, who serves as chair of the Board, is granted investment discretion over a number of statutorily created trusts and agencies (Trust and Agencies). As of December 31, 2021, the total value of the SMRS assets was approximately \$100.5 billion, invested as follows:

Domestic Equities	23.8%
Private Equity	23.1%
International Equity	15.8%
Real Return & Opportunistic	12.3%
Fixed Income	9.6%
Real Estate & Infra.	7.7%
Absolute Return	6.2%
Short Term	1.5%

The assets that comprise the Trust and Agencies are approximately \$11.9 billion.

The Board delegated fiduciary duties and the authority to invest funds on behalf of the SMRS to the Bureau of Investments (BOI). The BOI has similarly been granted responsibility by the SMRS Treasurer for investing assets of the Trusts and Agencies. Assets are managed by in-house investment specialists and by external investment managers.

The BOI has a responsibility to identify and evaluate securities litigation actions in which it has an interest and, where eligible, to participate in the recovery in securities class action litigation. A Contractor is needed with substantial public fund experience and depth of resources to provide comprehensive securities litigation monitoring services on U.S. and non-U.S. cases on a full retainer basis. For the purposes of this RFP, non-U.S. cases mean cases filed in a jurisdiction outside the United States.

The Bureau of Investments is managed by an executive team consisting of a Chief Investment Officer, Senior Deputy Chief Investment Officer, Chief Compliance Officer & General Counsel, Senior Director of Investments – Private Markets, and Senior Director of Asset Allocation/Director of Investments – Public Markets, and support staff. The executive team resides within the Administration Division of the BOI and is supported by the Compliance and Corporate Governance Division (CCG Division), which reports to the Chief Compliance Officer & General Counsel. The CCG Division works to create sustainable long-term value and achieve maximum return for shareholders of the SMRS

by promoting strong corporate governance principles. Among other things, the CCG Division is responsible for overseeing the timely filing of all proofs of claims in actions where the SMRS is an eligible claimant and also for communicating potential recoveries that exceed the SMRS's litigation threshold to the BOI executive team.

SCOPE

This Contract is for Securities Litigation Monitoring Services, which sits at the front end of the SMRS' overall securities litigation strategy. Securities litigation is used to recover money where the SMRS has realized damages and other losses due to securities fraud committed by companies within its investment portfolio. The SMRS views securities claims as assets, which are managed with the goal of maximizing total recovery. The Securities Litigation Monitoring Services and their effective implementation are instrumental in achieving this goal.

1. Requirements

1.1. General Requirements

I. The Contractor must:

- A. Coordinate with the SMRS's Custodian for the purposes of obtaining trading information necessary for monitoring the portfolio.
- B. Have the capabilities to work with a securities custodian in order to track claims filed by the custodian with litigation pending for which SMRS is eligible to participate.
- C. Coordinate with the Compliance and Corporate Governance (CCG) Division in conducting a monthly reconciliation of all accounts open through the Custodian and those monitored for securities litigation to ensure all holdings are being monitored.
- D. Monitor the SMRS's investment portfolio to identify newly filed, pending, and settled securities fraud litigation and other actions in which it has a financial interest in domestic securities class action litigation in which a potential breach of any duty owed to the SMRS has occurred; provide email notification of applicable actions.
- E. Use internal and external resources to identify, evaluate, and monitor litigation in which the SMRS has a financial interest including SEC filings, media reports, and pertinent web sites in addition to its review of securities class action filings.
- F. Use external resources and sources of information in the research process. The sources may include but are not limited to:
 - a. Feeds from third-party securities class action data providers; Employs two feeds from class action data providers to ensure redundancy.
 - b. Notices directly from claims administrators.
 - c. Tailored alerts generated by LexisNexis, the PACER system, and Bloomberg or other comparable order management system.

- d. Security identification capabilities from Bloomberg.
 - e. Notices from plaintiff law firms.
 - f. A variety of online content aggregation tools designed to identify relevant news trends on the web.
- G. Data and information received through feeds from third-party securities class action data providers and tailored alerts is updated in Contractor's portal one to four business days thereafter. Other data information sourced from notices and the Contractor's research capabilities is updated when new information is made available.
- H. Identify actions where the SMRS has been adversely impacted and estimate the legally recoverable damages following protocols established by the National Association of Public Pension Attorneys.
- I. Identify approaching proof of claim filing deadlines for those cases in which the SMRS has a financial interest and provide the SMRS with notification via e-mail of the filing date.
- J. Verify on a monthly basis that the custodian has timely submitted claims on State's behalf in all class actions where the SMRS has a financial interest. Provide the SMRS with written notice when Contractor determines that Custodian did not timely file a proof of claim in an action where the SMRS's SMRS is an eligible claimant.
- K. Monitor securities litigation in which the SMRS has been impacted providing separate notice to the SMRS when a case exceeds the SMRS loss threshold (currently \$10 million) for evaluating whether the SMRS should pursue lead plaintiff status in accordance with the SMRS Securities Litigation Policy (a copy of which will be provided at a date approved by the Program Manager).
- L. For non-US group actions, provide the SMRS with information necessary for making an informed decision about participating in the recovery including an analysis of jurisdiction issues and background on the litigation funder.
- M. For non-US group actions where the SMRS's SMRS has agreed to participate, provide the SMRS with monthly updates on the status of the litigation.
- N. Provide a Web-based platform and email alerts that will make available information on newly filed, pending, and settled securities fraud litigation cases. Information must include:
- a. Information on Defendant and Plaintiff (identities and legal representation);
 - b. Links to relevant court filings;
 - c. Summary of Allegations;
 - d. Analysis of the SMRS' financial interest;
 - e. All relevant or related CUSIP numbers;
 - f. Docket numbers;

- g. Class period holdings;
 - h. Company tickers; and
 - i. Any other relevant information to allow the SMRS to verify holdings.
- O. Provide a Web-based platform that will generate reports specific to the SMRS. Portal must contain a watch list (potential claims), decision list , and case list (pending cases).

Based on the State's reporting needs, Contractor must provide State with an Excel workbook that can be filtered to support any ad-hoc inquiries, which can be downloaded from the Contractor's Portal or can be sent by secure email. Contractor will develop custom reports to be provided on an as-requested basis.

- P. Be responsive and available on an as needed basis to answer questions about newly filed, pending, and recently settled securities litigation or in other cases in which the SMRS has a financial interest.
- Q. Certify that it meets the following minimum qualifications:
- a. Contractor is NOT a law firm in the business of litigation securities class action cases.
 - b. Contractor has extensive experience in monitoring public pension fund involvement with U.S. and non-U. S class action securities litigation cases.
 - c. Contractor has the resources necessary for identifying, evaluating, and monitoring U.S. and non-U.S. securities fraud litigation matters.
- R. The Contractor must provide guidance with respect to antitrust matters, that have a potential impact on or give rise to an opportunity to recover under a proof of claim for the SMRS.

II. International Securities Litigation Monitoring, Research and Participation

- A. Contractor must provide the SMRS with access to detailed information and customized guidance based on the requirements of each non-US jurisdiction in which relevant litigation is identified.
- a. Deliver case profiles that provide insight into the group claims process in different jurisdictions and the local players involved with regular updates of country-specific requirements.
 - b. Actively monitoring international group actions and optional email alerts, which notify applicable cases and potential eligibility.
 - c. Provide unlimited access to a web-based platform which has the ability to include all current and historical research and reporting needs.
 - d. Be able to create an opportunity analysis detailing case eligibility and the required steps for each case by using the SMRS data.

- e. Provide loss/damage calculations based on the data supplied by the SMRS to assist the SMRS in considering whether to participate in eligible group actions.
- f. Provide ongoing insight through quarterly newsletters and private webinar briefings.

B. Event Participation: Registering Interest and Participation Support

- a. Should the SMRS elect to participate in non-US group securities litigation, Contractor will register interest with the organizer on behalf of accounts for which approval is granted by the organizer.
- b. Contractor can submit transaction histories to organizers for preliminary loss analysis. This initial step can be performed anonymously (when permitted by the organizer).
- c. Contractor will facilitate the opt-in process by submitting applicable documentation and ensuring that required steps for participation are met.
- d. Contractor will provide relevant transaction histories with applicable documentation to litigation organizers as required for participation in the proposed action.
- e. Contractor can provide upfront and ongoing research and support for participation in the litigation from inception through to settlement and disbursement.

1.2. Transition

If the State terminates the Contract, for convenience or cause, or if the Contract is otherwise dissolved, voided rescinded, nullified, expires or rendered unenforceable, the Contractor agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, deliverables, software, leases, etc. to the State or a third party designated by the State, if applicable. If the Contract expires or terminates, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services and deliverables within a reasonable period of time that in no event will exceed ninety (90) days. These efforts must include, but are not limited to, those listed in Section 31 of the Contract Terms.

1.3. Training

The Contractor must provide the following training:

1. Provide comprehensive training and instruction to State employees on using the Web-based platform, at the onset of the relationship and as changes are made to the system.
2. An annual on-site or virtual meeting with vendor staff to provide hands on discussion or training on applicable applications.

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 provide proposals that conform to State IT policies and standards. All services and products provided as a result of this RFP 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):

https://www.michigan.gov/dtmb/0,5552,7-358-82547_56579_56755---,00.html

1.5. User Type and Capacity

Contractor must be able to meet the expected number of concurrent Users without crashing or impacting service performance.

Contractor will provide a web-based Portal and scale server resources to prevent system disruptions.

1.6. End-User Operating Environment

The SOM environment is X86 VMware, IBM Power VM and Oracle VM, with supporting enterprise storage monitoring and management.

The software must run under commonly used web browsers. At a minimum the software must support Internet Explorer v11 or higher, or Edge, Chrome v71 or higher, Firefox v62 or higher, and Safari v12 or higher for iOS operating systems.

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

Contractor must notify clients of impending functionality enhancements during regularly scheduled conference calls and will send email alerts when appropriate. Contractor will not reduce or remove functionality without discussion with client. Any significant changes to application roadmap will be discussed during regularly scheduled calls and Contractor will likely include feedback and client requests in roadmap to improve overall client service.

Contractor must identify any plug-ins for future system requirements

Contractor will regularly solicit functionality requests from clients to assure that its application best serves them and will work to incorporate those requests into future application versions whenever practical. If application upgrades or modifications require the system to be offline, Contractor will schedule such work outside of regular business hours. In the rare event that such maintenance requires system downtime during business hours, Contractor will communicate maintenance schedules in advance and verify that system interruption will not negatively impact clients.

1.7. Hosting

Contractor must maintain and operate a backup and disaster recovery plan (See Exhibit 1 to Schedule E) to achieve a Recovery Point Objective (RPO) of 24 hours, and a Recovery Time Objective (RTO) of 24 hours.

1.8. Secure Web Application Standard

Contractor's solution must meet the State's Secure Application Development Standards as mandated by the State.

Secure Application Development Life Cycle (SADLC)

Contractor is required to meet the States Secure Application Development Life Cycle requirements that include:

A. Security Accreditation

Contractor agrees to work with the State in good faith to respond to security inquiries and complete security questionnaires, as requested by the State.

B. Application Scanning, Externally hosted solutions. The DIVIDEX portal application is hosted at RackSpace, a tier 1 data center, that employs state of the art security policies and procedures as well as its own securities operations center that we believe follows a 24x7x365 "follow the sun" Security Operations model, with a global response footprint and uses foundational, advanced, and next-generation security tools and services, to provide security monitoring and protection of people, assets, and operations. In the next year, we expect to migrate the DIVIDEX portal application to Microsoft's Azure platform that has like-kind security policies and procedures.

C. Infrastructure Scanning, Externally hosted solutions. RackSpace is an advanced industry-leading cloud provider that employs numerous tools, technologies, and processes to safeguard hosted operations. Rackspace employs these solutions continuously (24/7/365) and man its security operations with a dedicated team of data security professionals to provide continuous monitoring and analysis of the latest security threats to help identify and defeat malicious activities as reflected in the Rackspace SOC I report, provided to State by the Contractor.

2. Service Requirements

2.1. Timeframes

All Contract Activities must be delivered within two business days from receipt of order. The receipt of order date is pursuant to the **Notices** section of the Standard Contract Terms.

3. Staffing

3.1. Contractor Representative

The Contractor must appoint a single point of contact 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.

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:
Kyle Elzinga 7285 Parsons Drive Dimondale, MI 48913 ElzingaK1@michigan.gov 517-614-0956	Irwin B. Schwartz One University Ave., Suite 301(c) Westwood, MA 02090 ischwartz@dividexmanagement.com 781-636-5075

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:
Karl Borgquist 2501 Coolidge Rd East Lansing, MI 48823 borgquistk@michigan.gov 517-230-8419	William Adams One University Ave., Suite 301(c) Westwood, MA 02090 wadams@dividexmanagement.com 781-636-5076

3.4. Technical Support, Repairs and Maintenance

The Contractor must be available for calls and service during the hours of 8:00 am to 5:00 pm EST. Contractor customer service team can be contacted at 1-800-416-9820 ext. 5076.

When providing technical support, the Call Center must resolve the caller’s issue within 72 hours. If the caller’s issue cannot be resolved within 72 hours, on-site service must be scheduled. The on-site service must be performed within 48 hours of the time the issue was scheduled for service.

3.5. Work Hours

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

3.6. Key Personnel

The Contractor must appoint Key Personnel 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 48 hours.

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. Identify which of the required key personnel positions they are fulfilling.

3. Key Personnel's roles and responsibilities, as they relate to this RFP, if the Contractor is successful in being awarded the Contract. Descriptions of roles should be functional and not just by title.
4. Identify if each Key Personnel is a direct, subcontract, or contract employee.
5. Identify where each Key Personnel staff member will be physically located (city and state) during the Contract performance.

1. Name	2. Position Fulfilling Years of Experience in Current Classification	3. Role(s) / Responsibilities	4. Direct / Subcontract / Contract	5. Physical Location
Irwin Schwartz	Founder & President; Eight years	Executive leadership, vision and strategy, client advice, legal analysis and negotiation of retainer and funding agreements	Direct	Westwood, MA
William Adams	Chief Compliance Officer, Chief Operating Officer Less than one year	Day-to-day operations and execution. Legal analysis and information governance including oversight of legal analyst staff and the client-facing information on the DIVIDEX Portal.	Direct	Westwood, MA
David Pineau	Chief Technology Officer Four years	Strategic application development, database development, business	Direct	Westwood, MA

1. Name	2. Position Fulfilling Years of Experience in Current Classification	3. Role(s) / Responsibilities	4. Direct / Subcontract / Contract	5. Physical Location
		intelligence, financial application, and data security management.		
Antoine Brewster	Financial Analyst Less than one year	Identification of potential cases and financial analysis using Bloomberg, custodial portals and a variety of propriety and standard software tools and applications. Executes daily screen process.	Direct	Westwood, MA
Amanda Sutrick	Legal Analyst New hire	Monitoring dockets, research new cases, prepare case reports, update DIVIDEX Portal as necessary	Direct	Westwood, MA

3.7. Disclosure of Subcontractors

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

- The legal business name; address; telephone number; a description of subcontractor's organization and the services it will provide; and information concerning subcontractor's ability to provide the Contract Activities.
- The relationship of the subcontractor to the Contractor.
- Whether the Contractor has a previous working experience with the subcontractor. If yes, provide the details of that previous relationship.

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

Bidder must provide detailed information as requested in the above requirement(s).	
The legal business name, address, telephone number of the subcontractor(s).	DIVIDEX Analytics, LLC One University Ave, Suite 301(c) Westwood, MA 02090
A description of subcontractor's organization and the services it will provide and information concerning subcontractor's ability to provide the Contract Activities.	DIVIDEX Analytics, LLC holds two patents covering systems and methods for securities claims identification and recovery. It maintains the DIVIDEX Portal and provides technology support services for DIVIDEX Management, LLC
The relationship of the subcontractor to the Bidder.	DIVIDEX Analytics, LLC and DIVIDEX Management, LLC are both wholly owned by IPRI, LLC and share office space and personnel under intra-company agreements.
Whether the Bidder has a previous working experience with the subcontractor. If yes, provide the details of that previous relationship.	DIVIDEX Analytics, LLC and DIVIDEX Management, LLC are co-occurring entities. DIVIDEX Analytics provides technology support for all DIVIDEX Management clients and activities.
A complete description of the Contract Activities that will be performed or provided by the subcontractor.	DIVIDEX Analytics, LLC maintains the DIVIDEX Portal through which DIVIDEX Management, LLC offers global securities litigation monitoring services, including a searchable database of all the claims and potential claims to which clients have exposure, estimates market losses, identifies, and calculates case deadlines (such as statute of repose and foreign litigation registration deadlines), and publishes related memos, reports and charts prepared by DIVIDEX Management analysts
Of the total bid, the price of the subcontractor's work.	\$78,000 per year plus \$50,000 for optimization and reconciliation services.

Bidder must provide detailed information as requested in the above requirement(s).	
The legal business name, address, telephone number of the subcontractor(s).	BLA Schwartz, P.C. One University Ave., Suite 302(b) Westwood, MA 02090
A description of subcontractor's organization and the services it will provide and information concerning subcontractor's ability to provide the Contract Activities.	BLA Schwartz, PC is a law firm founded in 1994 by Irwin Schwartz. BLA Schwartz focuses on business litigation and providing securities litigation advice to pension funds and institutional investors.
The relationship of the subcontractor to the Bidder.	Irwin Schwartz, Founder and President of DIVIDEX Management, LLC is also the principal of BLA Schwartz, P.C.
Whether the Bidder has a previous working experience with the subcontractor. If yes, provide the details of that previous relationship.	DIVIDEX Management, LLC has an ongoing relationship with BLA Schwartz, P.C., for merits and potential recovery analysis with respect to securities litigation, and to support clients that decide to take an active role in securities litigation, including selection of counsel, negotiation of fee agreements, and supervision of counsel.
A complete description of the Contract Activities that will be performed or provided by the subcontractor.	BLA Schwartz, P.C., will provide merits and potential recovery analysis with respect to securities litigation under the Optional Global Securities Litigation Monitoring Service, and if the State decides to take an active role in a securities litigation, BLA Schwartz P.C. will advise on selection of counsel, negotiation of fee agreements, and supervision of counsel.
Of the total bid, the price of the subcontractor's work.	Included in Global Securities Litigation Monitoring pricing at no additional charge, paid by DIVIDEX Management through intra-company cost-sharing agreement with BLA Schwartz.

Bidder must provide detailed information as requested in the above requirement(s).	
The legal business name, address, telephone number of the subcontractor(s).	DIVIDEX Risk Insurance Company One University Ave., Suite 301(c) Westwood, MA 02090

Bidder must provide detailed information as requested in the above requirement(s).	
A description of subcontractor’s organization and the services it will provide and information concerning subcontractor’s ability to provide the Contract Activities.	DIVIDEX Risk, a Delaware statutory trust, is an affiliated captive insurance carrier that provides DIVIDEX Management clients adverse party legal expense insurance for claims in loser-pays jurisdictions that meet our underwriting criteria.
The relationship of the subcontractor to the Bidder.	DIVIDEX Risk, LLC and DIVIDEX Management LLC, are both wholly owned by IPRI, LLC.
Whether the Bidder has a previous working experience with the subcontractor. If yes, provide the details of that previous relationship.	DIVIDEX Risk was organized specifically to provide adverse party cost insurance to DIVIDEX Management LLC clients.
A complete description of the Contract Activities that will be performed or provided by the subcontractor.	DIVIDEX Risk provides adverse legal expense insurance for claims in loser-pays jurisdictions that meet our underwriting criteria.
Of the total bid, the price of the subcontractor’s work.	\$10,000 (est.) annual premium, depending on underwriting, included in the Global Litigation Monitoring pricing, but may be deducted if not wanted by State.

3.8. Security

The Contractor will be subject to the following security procedures:

The Contractor must explain any additional security measures in place to ensure the security of State facilities. The State may require the Contractor’s personnel to wear State issued identification badges.

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

4.1. Project Plan

The Contractor will carry out this project under the direction and control of the Program Manager. Within 30 calendar days of the Effective Date, the Contractor must submit a final project plan to the Program Manager for approval. The plan must include: (a) the Contractor's organizational chart with names and title of personnel assigned to the

project, which must align with the staffing stated in accepted proposals; and (b) the project breakdown showing sub-projects, tasks, timeline, and resources required.

Project plan for Securities Litigation Monitoring Services outlined below:

- Onboarding Day 1 through 30 (subject to custody bank timely performance)
 - Introductions in kickoff meeting at client – Irwin Schwartz, Pres.
 - Data acquisition – David Pineau CTO
 - Obtain portal credentials from custody bank
 - Investigate accessibility of Bureau of Investment’s portfolio via Bloomberg PORT function
 - Build client data staging tables and associated import processes
 - Test custodial data access functionality
 - Verify import process functionality
 - Portal configuration – David Pineau CTO
 - Identify client users
 - Obtain email and password information
 - Determine use cases – Will Adams COO
 - Determine notification thresholds and cadence – Will Adams COO
 - Schedule portal training
 - Determine bespoke reporting requirements – David Pineau CTO
 - Determine use cases and requirements
 - Determine workflow and cadence
 - Prepare and circulate pro forma reports for evaluation and commentary
 - Iterate report development and collaboration with client
 - Finalize and schedule reports
 - Determine claims filing processes and procedures
 - Informational meeting with client and custody bank personnel to discuss DIVIDEX services and approach
 - Arrange for access to custodial claim and payment reports
 - Determine notification and decision-making process for claims filing optimization opportunities
- Regular service Day 31 through end of calendar year
 - Notifications from DIVIDEX Portal at customer instructed thresholds and cadence – Antoine Brewster FA
 - Claims filing optimization recommendations – David Pineau CTO
 - Periodic meetings at customer’s cadence to evaluate DIVIDEX performance and adjustments to DIVIDEX services

4.2. Meetings

The Contractor must attend the following meetings:

Kick-off meeting within 30-calendar days of the Effective Date.

The State may request other meetings to be held virtually or in-person, as it deems appropriate.

4.3. Reporting

The Contractor must submit to the Program Manager the following written reports:

1. Provide a monthly report detailing the SMRS' [income] [dollar figure amounts] generated from the SMRS' securities litigation matters.
2. Delivery monthly report evidencing lists of settlements for which the SMRS has filed a claim, including breakdown of dollar figures of settled amounts.
3. Provide the SMRS with a monthly securities litigation income report detailing all income received from securities litigation proceeds.

5. Pricing

5.1. Price Term

Pricing is firm for the entire length of the Contract.

6. Ordering

6.1. Authorizing Document

The appropriate authorizing document for the Contract will a Purchase Order or Delivery Order.

7. Invoice and Payment

7.1. Invoice Requirements

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

7.2. Payment Methods

The State will make payment for Contract Activities within 45 days of the State's receipt of invoice.

7.3. Procedure

Invoices are sent to TREAS-BOI-INVOICES@michigan.gov and treas_fadinvoices@michigan.gov - which is received and processed by BOI. The invoice is checked against the contract to make sure terms align, then sent to the Program Manager for approval. The approved invoices are then directed to Treasury's Accounting Services for payment. Purchasing may be brought in if there are questions surrounding the contract or if Accounting Services and/or BOI need a new PO/DO. Accounting Services verifies and enters the payment into SIGMA.

8. Liquidated Damages

Late or improper completion of the Contract Activities will cause loss and damage to the State, and it would be impracticable and extremely difficult to fix the actual damage sustained by the State. Therefore, if there is late or improper completion of the Contract Activities the State is entitled to collect liquidated damages in the amount of \$500 and an additional \$100 per day for each day Contractor fails to remedy the late or improper completion of the Work.

SCHEDULE B PRICING

Security Litigation Monitoring Services

Quick payment terms: 5% discount off invoice for Securities Litigation Monitoring Services if paid within 30 days after receipt of invoice.

Securities Litigation Monitoring Services					
Year 1	Year 2	Year 3	Grand Total	Option Year 1	Option Year 2
\$110,000	\$106,000	\$100,000	\$316,000	\$100,000	\$100,000

Securities Litigation Monitoring <i>Optional</i> Services – Global Securities Litigation Monitoring Pricing (See Schedule A, Section I L and M and Section II A & B)					
Year 1	Year 2	Year 3	Grand Total	Option Year 1	Option Year 2
\$55,000	\$52,500	\$50,000	\$157,500	50,000	50,000

Securities Litigation Monitoring Services SECURITIES CLASS ACTION FILING OPTIMIZATION AND RECOVERY RECONCILIATION ¹					
Year 1	Year 2	Year 3	Grand Total	Option Year 1	Option Year 2
20,000	20,000	20,000	60,000	18,000	18,000

¹ This pricing for Filing Optimization and Recovery Reconciliation is only available as an add on to Securities Litigation Monitoring Services and is not available as a stand-alone service.

STANDARD CONTRACT TERMS

This STANDARD CONTRACT (“**Contract**”) is agreed to between the State of Michigan (the “**State**”) and DIVIDEX Management, LLC (“**Contractor**”), a Delaware Limited Liability Company. This Contract is effective on July 27, 2022 (“**Effective Date**”), and unless terminated, expires on July 26, 2025.

This Contract may be renewed for up to renewed for up to two (2) additional one (1) year option period(s). Renewal is at the sole discretion of the State and will automatically extend the Term of this Contract. The State will document its exercise of renewal options via Contract Change Notice.

The parties agree as follows:

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

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

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

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

“**Allegedly Infringing Materials**” has the meaning set forth in **Section 33**.

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

“**Business Owner**” is the individual appointed by the agency buyer to (a) act as the agency’s representative in all matters relating to the Contract, and (b) co-sign off on notice of Acceptance. The Business Owner will be identified in the Statement of Work.

“**Change**” has the meaning set forth in **Section 5**.

“**Change Notice**” has the meaning set forth in **Section 5**.

“**Change Proposal**” has the meaning set forth in **Section 5**.

“**Change Request**” has the meaning set forth in **Section 5**.

“**Confidential Information**” has the meaning set forth in **Section 38.a**.

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

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

“**Contract Activities**” includes the Services, Deliverables, delivery of commodities, or other contractual requirements set forth in **Schedule A – Statement of Work**, including any subsequent Statement(s) of Work, that the Contractor agrees to provide, and the State agrees to purchase pursuant to the terms of this Contract.

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

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

“Contractor’s Bid Response” means the Contractor’s proposal submitted in response to the State’s requests to obtain Contract Activities.

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

“Deliverables” means all materials, including, but not limited to Software, Documentation, written materials and commodities, that Contractor is required to or otherwise does provide to the State under this Contract and otherwise in connection with any Services, including all items specifically identified as Deliverables in **Schedule A - Statement of Work**.

“Dispute Resolution Procedure” has the meaning set forth in **Section 55**.

“Documentation” means all generally available documentation relating to the Software, including all user manuals, operating manuals and other instructions, specifications, documents and materials, in any form or media, that describe any component, feature, requirement or other aspect of the Software or Hosted Services (as defined in **Schedule E**), including any functionality, testing, operation or use thereof.

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

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

“Fees” means collectively all fees collected by the Contractor pursuant to the terms of this Contract.

“Financial Audit Period” has the meaning set forth in **Section 42**.

“Force Majeure” has the meaning set forth in **Section 54**.

“HIPAA” has the meaning set forth in **Section 47**.

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

“Key Personnel” means any Contractor Personnel identified as key personnel in **Schedule A – Statement of Work**.

“Law” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree or other requirement or rule of any federal,

state, local or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction.

“**Loss or Losses**” means all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

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

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

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

“**Permitted Subcontractor**” has the meaning set forth in **Section 13**.

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

“**Pricing**” means any and all fees, rates and prices payable under this Contract, including pursuant to any Schedule or Exhibit hereto.

“**Pricing Schedule**” means the schedule attached as **Schedule B**, setting forth the Fees, rates and Pricing payable under this Contract.

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

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

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

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

“**Services**” means any of the services Contractor is required to or otherwise does provide under this Contract, **Schedule A** - Statement of Work, **Schedule C** -

Software Terms for On-site Hosting (if applicable), and **Schedule D** – Contractor Hosted Software and Services (if applicable).

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

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

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

“**State Data**” has the meaning set forth in **Section 37.a**.

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

“**Statement of Work**” means any statement of work entered into by the parties and attached as a schedule to this Contract. The initial Statement of Work is attached as **Schedule A**, and subsequent Statements of Work shall be sequentially identified and attached as Schedules A-1, A-2, A-3, etc.

“**Stop Work Order**” has the meaning set forth in **Section 27**.

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

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

“**Transition Period**” has the meaning set forth in **Section 31**.

“**Transition Responsibilities**” has the meaning set forth in **Section 31**.

“**Unauthorized Removal**” has the meaning set forth in **Section 15**.

“**Unauthorized Removal Credit**” has the meaning set forth in **Section 15**.

“**Warranty Period**” means the period set forth in Schedule A, the Statement of Work, commencing on the date of acceptance of all Deliverables purchased pursuant to the terms of this Contract.

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

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

Contract whether or not embodied in this Contract. Work Product does not include any of Contractor's software, system, processes, analytics, methods, know-how or tools.

- 2. Duties of Contractor.** Contractor must perform the services and provide the deliverables described in **Schedule A – Statement of Work** (the “**Contract Activities**”). 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, and meet operational standards, unless otherwise specified in **Schedule A**.

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) not make any media releases without prior written authorization from the State; (i) 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; (j) comply with all State physical and IT security policies and standards which will be made available upon request; and (k) 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.

- 3. Statement(s) of Work.** Contractor shall provide the Contract Activities pursuant to Statements of Work entered into under this Contract. No Statement of Work shall be effective unless signed by each party's Contract Administrator. The term of each Statement of Work shall commence on the parties' full execution of the Statement of Work and terminate when the parties have fully performed their obligations. The terms and conditions of this Contract will apply at all times to any Statements of Work entered into by the parties and attached as a schedule to this Contract. The State shall have the right to terminate such Statement of Work as set forth in **Sections 28 and 29** Contractor acknowledges that time is of the essence with respect to Contractor's obligations under each Statement of Work and agrees that prompt and timely performance of all such obligations in accordance with this Contract and the Statements of Work is strictly required.

- 4. Statement of Work Requirements.** Each Statement of Work may include the following: (a) names and contact information for Contractor’s Contract Administrator, Program Manager and Key Personnel; (b) names and contact information for the State’s Contract Administrator, Program Manager and Business Owner; (c) a detailed description of the Services to be provided under this Contract, including any training obligations of Contractor; (d) a detailed description of the Deliverables to be provided under this Contract; (e) a description of all liquidated damages associated with this Contract, if any; and (f) a detailed description of all State Resources, if any, required to complete the Implementation Plan, if such a Plan is necessary.
- 5. Change Control Process.** The State may at any time request in writing (each, a “Change Request”) changes to the Statement of Work, including changes to the Contract Activities (each, a “Change”). Upon the State’s submission of a Change Request, the parties will evaluate and implement all Changes in accordance with this **Section 5**. No Change will be effective until the parties have executed a Change Notice. Except as the State may request in its Change Request or otherwise in writing, Contractor must continue to perform its obligations in accordance with the Statement of Work pending negotiation and execution of a Change Notice. Contractor will use its best efforts to limit any delays or Fee increases from any Change to those necessary to perform the Change in accordance with the applicable Change Notice. Contractor may, on its own initiative and at its own expense, prepare and submit its own Change Request to the State. However, the State will be under no obligation to approve or otherwise respond to a Change Request initiated by Contractor.
- 6. 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:
Kyle Elzinga 7285 Parsons Drive Dimondale, MI 48821 ElzingaK1@michigan 517-614-0956	Irwin Schwartz One University Ave, Suite 301(c) Westwood, MA 02090 ischwartz@dividexmanagement.com 781-636-5075

- 7. 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 **Schedule A – Statement of Work**) if, in the opinion of the State, it will ensure performance of the Contract.
- 8. Insurance Requirements.** Contractor, at its sole expense, must maintain the insurance coverage identified below. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or otherwise result from Contractor's or a subcontractor's performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by

the State; and (c) be provided by a company with an A.M. Best rating of "A-" or better, and a financial size of VII or better.

Required Limits	Additional Requirements
Commercial General Liability Insurance	
Minimum Limits: \$1,000,000 Each Occurrence \$1,000,000 Personal & Advertising Injury \$2,000,000 Products/Completed Operations \$2,000,000 General Aggregate	Contractor must have their policy endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds for both ongoing and products/completed operations.
Automobile Liability Insurance	
Minimum Limits: \$1,000,000 Per Accident	Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds; and (2) include Hired and Non-Owned Automobile coverage.
Workers' Compensation Insurance	
Minimum Limits: Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
Minimum Limits: \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease	
Professional Liability (Errors and Omissions) Insurance	
Minimum Limits: \$2,000,000 Each Occurrence \$2,000,000 Annual Aggregate	

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

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

This Section is not intended to and is not 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).

9. Reserved.

10. Reserved.

11. Independent Contractor. Contractor is an independent contractor and assumes all rights, obligations and liabilities set forth in this Contract. Contractor, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the State, is responsible for the payment of wages, benefits and taxes of Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor.

12. Intellectual Property Rights. Contractor hereby acknowledges that the State is and will be the sole and exclusive owner of all right, title, and interest in the Work Product produced as part of the Contract Activities, including all intellectual property rights therein; provided, however, that in no event will any of Contractor's software, system, processes, analytics, methods, know-how or tools be deemed Work Product. In general, Work Product constitutes works made for hire as defined in Section 101 of the Copyright Act of 1976. To the extent any Work Product or intellectual property rights therein, do not qualify as works made for hire under the Copyright Act, Contractor will, and hereby does, immediately on its creation, assign, transfer and otherwise convey to the State, irrevocably and in perpetuity, throughout the universe, all right, title and interest in and to the Work Product including all intellectual property rights therein. Contractor also irrevocably waives any and all claims Contractor may have now or hereafter have in any jurisdiction to so called "moral rights" or rights of *droit moral* with respect to the Work Product. If Contract Activities includes the purchase or use of software, such purchase, use, or access to Software shall be subject to **Schedules B and C or D** of this Contract.

13. Subcontracting. Contractor will not, without the prior written approval of the State, which consent may be given or withheld in the State's sole discretion, engage any Third Party to perform Services. The State's approval of any such Third Party (each approved Third Party, a "**Permitted Subcontractor**") does not relieve Contractor of its representations, warranties or obligations under this Contract. Without limiting the foregoing, Contractor will: (a) be responsible and liable for the acts and omissions of each such Permitted Subcontractor (including such Permitted Subcontractor's employees who, to the extent providing Services or Deliverables, shall be deemed Contractor Personnel) to the same extent as if such acts or omissions were by

Contractor or its employees; (b) name the State a third party beneficiary under Contractor's Contract with each Permitted Subcontractor with respect to the Services; (c) be responsible for all fees and expenses payable to, by or on behalf of each Permitted Subcontractor in connection with this Contract, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments and disability benefits; and (d) notify the State of the location of the Permitted Subcontractor and indicate if it is located within the continental United States.

14. Staffing. Contractor is solely responsible for all Contractor Personnel and for the payment of their compensation, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments and disability benefits. The State's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.

15. Key Personnel. If, in the sole discretion of the State, Key Personnel are required to complete the Contract Activities, such Key Personnel shall be identified in **Schedule A - Statement of Work**. 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 Program 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.

Contractor will not remove any Key Personnel from their assigned roles on this Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal ("**Unauthorized Removal**"). An Unauthorized Removal does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation, or for cause termination of the Key Personnel's employment. Any Unauthorized Removal may be considered by the State to be a material breach of this Contract, in respect of which the State may elect to terminate this Contract for cause under **Section 28**.

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 **Section 28**, Contractor will issue to the State an amount equal to \$15,000 per individual (each, an "**Unauthorized Removal Credit**").

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.

16. 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 Schedule A, 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.

17. 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.

18. Change of Control. Contractor will notify within 30 days of any public announcement or otherwise once legally permitted to do so, the State of a change in Contractor's organizational structure or ownership. For purposes of this Contract, a change in control means any of the following: (a) a sale of more than 50% of Contractor's stock; (b) a sale of substantially all of Contractor's assets; (c) a change in a majority of Contractor's board members; (d) consummation of a merger or consolidation of Contractor with any other entity; (e) a change in ownership through a transaction or series of transactions; (f) or the board (or the stockholders) approves a plan of complete liquidation. A change of control does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.

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

19. Ordering. Contractor is not authorized to begin performance until receipt of authorization as identified in **Schedule A**.

20. 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 Schedule A. 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 28**, 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.

21. Reserved.

22. Reserved.

23. Reserved.

24. Terms of 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 performed as specified in Schedule A. 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. All prices 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.

25. Payment Disputes. The State may withhold from payment any and all payments and amounts the State disputes in good faith, pending resolution of such dispute, provided that the State: (a) timely renders all payments and amounts that are not in dispute; notifies Contractor of the dispute prior to the due date for payment, specifying in such notice: (i) the amount in dispute; and (ii) the reason for the dispute set out in sufficient detail to facilitate investigation by Contractor and resolution by the parties; (b) works with Contractor in good faith to resolve the dispute promptly; and (c) promptly pays any amount determined to be payable by resolution of the dispute.

Contractor shall not withhold any Contract Activities or fail to perform any obligation hereunder by reason of the State's good faith withholding of any payment or amount in accordance with this **Section 25** or any dispute arising therefrom.

26. Liquidated Damages. In addition to any applicable service level credits or applicable Unauthorized Removal Credits, other liquidated damages, if applicable, will be assessed as described in Schedule A.

27. 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.

28. Termination for Cause. The State may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the State: (a) endangers the value, integrity, or security of any location, data, or personnel; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (c) engages in any conduct that may expose the State to liability; (d) breaches any of its material duties or obligations; or (e) fails to cure a breach within the time stated in a notice of breach. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

If the State terminates this Contract under this Section, the State will issue a termination notice specifying whether Contractor must: (a) cease performance immediately, or (b) continue to perform for a specified period. If it is later determined that Contractor was not in breach of the Contract, the termination will be deemed to have been a Termination for Public Interest, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in **Section 24**, Termination for Public Interest.

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. 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.

- 29. Termination for Public Interest.** The State may immediately terminate this Contract in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities immediately, or (b) continue to perform the Contract Activities in accordance with **Section 31**, Transition Responsibilities. If the State terminates this Contract for public interest, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities.
- 30. Effect of Termination.** Upon and after the termination or expiration of this Contract or one or more Statements of Work for any or no reason: (a) Contractor will be obligated to perform all Transition Responsibilities specified in **Section 31**; (b) all licenses granted to Contractor in State Data will immediately and automatically also terminate. Contractor must promptly return to the State all State Data not required by Contractor for its Transition Responsibilities, if any; (c) Contractor will: (i) return to the State all documents and tangible materials (and any copies) containing, reflecting, incorporating, or based on the State's Confidential Information; (ii) permanently erase the State's Confidential Information from its computer systems; and (iii) certify in writing to the State that it has complied with the requirements of this **Section 30** in each case to the extent such materials are not required by Contractor for Transition Responsibilities, if any.
- 31. Transition Responsibilities.** Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed **90** calendar days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the 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) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of the State; (d) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and (e) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.
- 32. General Indemnification.** Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees

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

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

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

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

33. 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.

34. Limitation of Liability and Disclaimer of Damages. THE STATE WILL NOT BE LIABLE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS AND LOST BUSINESS

OPPORTUNITIES. 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.

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

36. Reserved.

37. State Data.

- a. Ownership.** The State's data ("**State Data**," which will be treated by Contractor as Confidential Information) includes: (a) the State's data collected, used, processed, stored, or generated as the result of the Contract Activities; (b) personally identifiable information ("**PII**") collected, used, processed, stored, or generated as the result of the Contract Activities, including, without limitation, any information that identifies an individual, such as an individual's social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother's maiden name, email address, credit card information, or an individual's name in combination with any other of the elements here listed; and, (c) personal health information ("**PHI**") collected, used, processed, stored, or generated as the result of the Contract Activities, which is defined under the Health Insurance Portability and Accountability Act (HIPAA) and its related rules and regulations. State Data is and will remain the sole and exclusive property of the State and all right, title, and interest in the same is reserved by the State. This Section survives the termination of this Contract.
- b. Contractor Use of State Data.** Contractor is provided a limited license to State Data for the sole and exclusive purpose of providing the Contract Activities, including a license to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the Contract Activities. Contractor must: (a) keep and maintain State Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Contract and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose State Data solely and exclusively for the purpose of providing the Contract Activities, such use and disclosure being in accordance with this Contract, any applicable Statement of Work, and applicable law; and (c) not use, sell, rent, transfer, distribute, or otherwise disclose or make available State Data for Contractor's own purposes or for the benefit of anyone other than

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

- c. **Extraction of State Data.** 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 the State Data in the format specified by the State.

Nothing in this Contract shall require either party to purge from its systems any confidential Information of the other party incidentally retained in such systems, provided that the receiving party continues to comply with the confidentiality obligations set forth in this Contract with respect to such Confidential Information.

- d. **Backup and Recovery of State Data.** Unless otherwise specified in Schedule A, Contractor is responsible for maintaining a backup of State Data and for an orderly and timely recovery of such data. Unless otherwise described in Schedule A, Contractor must maintain a contemporaneous backup of State Data that can be recovered within two (2) hours at any point in time.
- e. **Loss or Compromise of Data.** In the event of any act, error or omission, negligence, misconduct, or breach on the part of Contractor that compromises or is suspected to compromise the security, confidentiality, or integrity of State Data or the physical, technical, administrative, or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality, or integrity of State Data, Contractor must, as applicable: (a) notify the State as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence; (b) cooperate with the State in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by the State; (c) in the case of PII or PHI, at the State's sole election, (i) with approval and assistance from the State, notify the affected individuals who comprise the PII or PHI as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within five (5) calendar days of the occurrence; or (ii) reimburse the State for any costs in notifying the affected individuals; (d) in the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no less than twenty-four (24) months following the date of notification to such individuals; (e) perform or take any other actions required to comply with applicable law as a result of the occurrence; (f) pay for any costs associated with the occurrence, including but not limited to any costs incurred by the State in investigating and resolving the occurrence, including reasonable attorney's fees associated with such investigation and resolution; (g) without limiting Contractor's obligations of indemnification as further described in this Contract, indemnify, defend, and hold harmless the State for any and all claims, including reasonable attorneys' fees, costs, and incidental expenses, which may be suffered by, accrued against, charged to, or recoverable

from the State in connection with the occurrence; (h) be responsible for recreating lost State Data in the manner and on the schedule set by the State without charge to the State; and (i) provide to the State a detailed plan within ten (10) calendar days of the occurrence describing the measures Contractor will undertake to prevent a future occurrence. Notification to affected individuals, as described above, must comply with applicable law, be written in plain language, not be tangentially used for any solicitation purposes, and contain, at a minimum: name and contact information of Contractor's representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Contractor has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Contractor. The State will have the option to review and approve any notification sent to affected individuals prior to its delivery. Notification to any other party, including but not limited to public media outlets, must be reviewed and approved by the State in writing prior to its dissemination. The parties agree that any damages relating to a breach of this **Section 37** are to be considered direct damages and not consequential damages. This Section survives termination or expiration of this Contract.

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

a. Meaning of Confidential Information. For the purposes of this Contract, the term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was: (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.

39. Reserved.

40. Reserved.

41. Reserved.

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

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

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

43. Warranties and Representations. 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 28**, Termination for Cause. If Contract Activities includes purchase, use, or access to software, Contractor must agree to additional Warranties and Representations found in **Schedules B** or **D** of this Contract, as applicable.

44. 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.

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

46. Accessibility Requirements.

- a. All Software provided by Contractor under this Contract, including associated content and documentation, must conform to WCAG 2.0 Level AA. Contractor must provide a description of conformance with WCAG 2.0 Level AA specifications by providing a completed PAT for each product provided under the Contract. At a minimum, Contractor must comply with the WCAG 2.0 Level AA conformance claims it made to the State, including the level of conformance provided in any PAT. Throughout the Term of the Contract, Contractor must:
 - i. Maintain compliance with WCAG 2.0 Level AA and meet or exceed the level of conformance provided in its written materials, including the level of conformance provided in each PAT;
 - ii. Comply with plans and timelines approved by the State to achieve conformance in the event of any deficiencies;
 - iii. Ensure that no Maintenance Release, New Version, update or patch, when properly installed in accordance with this Contract, will have any adverse effect on the conformance of Contractor's Software to WCAG 2.0 Level AA;
 - iv. Promptly respond to and resolve any complaint the State receives regarding accessibility of Contractor's Software;
 - v. Upon the State's written request, provide evidence of compliance with this Section by delivering to the State Contractor's most current PAT for each product provided under the Contract; and
 - vi. Participate in the State of Michigan Digital Standards Review described below.
- b. State of Michigan Digital Standards Review. Contractor must assist the State, at no additional cost, with development, completion, and on-going maintenance of an accessibility plan, which requires Contractor, upon request from the State, to submit evidence to the State to validate Contractor's accessibility and compliance with WCAG 2.0 Level AA. Prior to the solution going-live and thereafter on an annual basis, or as otherwise required by the State, re-assessment of accessibility may be required. At no additional cost, Contractor must remediate all issues identified from any assessment of accessibility pursuant to plans and timelines that are approved in writing by the State.

- c. **Warranty.** Contractor warrants that all WCAG 2.0 Level AA conformance claims made by Contractor pursuant to this Contract, including all information provided in any PAT Contractor provides to the State, are true and correct. If the State determines such conformance claims provided by the Contractor represent a higher level of conformance than what is actually provided to the State, Contractor will, at its sole cost and expense, promptly remediate its Software to align with Contractor's stated WCAG 2.0 Level AA conformance claims in accordance with plans and timelines that are approved in writing by the State. If Contractor is unable to resolve such issues in a manner acceptable to the State, in addition to all other remedies available to the State, the State may terminate this Contract for cause under **Section 28**.
 - d. Contractor must, without limiting Contractor's obligations of indemnification as further described in this Contract, indemnify, defend, and hold harmless the State for any and all claims, including reasonable attorney's fees, costs, and incidental expenses, which may be suffered by, accrued against, charged to, or recoverable from the State arising out of its failure to comply with the foregoing accessibility standards.
 - e. Failure to comply with the requirements in this Section will constitute a material breach of this Contract.
- 47. HIPAA Compliance.** The State and Contractor must comply with all obligations under HIPAA and its accompanying regulations, including but not limited to entering into a business associate agreement, if reasonably necessary to keep the State and Contractor in compliance with HIPAA.
- 48. Reserved.**
- 49. Reserved.**
- 50. 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.
- 51. Unfair Labor Practice.** Under MCL 423.324, the State may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.
- 52. Governing Law.** This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in Michigan Court of Claims. Contractor consents to venue in Ingham County, and waives any

objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint agents in Michigan to receive service of process.

- 53. Non-Exclusivity.** Nothing contained in this Contract is intended nor will be construed as creating any requirements contract with Contractor. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Contract Activities from other sources.
- 54. 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.
- 55. 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.

- 56. Media Releases.** News releases (including promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates must not be made without prior written State approval, and then only in accordance.
- 57. Website Incorporation.** The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.
- 58. 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:

Name	Description
Schedule A	Statement of Work
Schedule B	Pricing and Fees
Schedule E (as applicable)	Data Security Requirements

Name	Description
Exhibit 1 to Schedule E (as applicable)	Contractor's Disaster Recovery Plan

- 59. Entire Agreement and Order of Precedence.** This Contract, which includes Schedule A – Statement of Work, and schedules and exhibits which are hereby expressly incorporated, 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 Schedule A – Statement of Work; (b) second, Schedule E – Data Security Requirements; (c) third, Schedule A – Statement of Work as of the Effective Date; and (d) fourth, the remaining schedules expressly incorporated into this Contract as of the Effective Date. NO TERMS ON CONTRACTOR'S INVOICES, WEBSITE, BROWSE-WRAP, SHRINK-WRAP, CLICK-WRAP, CLICK-THROUGH OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS PROVIDED WITH ANY OF THE SERVICES, OR DOCUMENTATION HEREUNDER, EVEN IF ATTACHED TO STATE'S DELIVERY OR PURCHASE ORDER, WILL CONSTITUTE A PART OR AMENDMENT OF THIS CONTRACT OR IS BINDING ON THE STATE OR ANY AUTHORIZED USER FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE STATE AND THE AUTHORIZED USER, EVEN IF ACCESS TO OR USE OF SUCH SERVICE OR DOCUMENTATION REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.
- 60. 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.
- 61. Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
- 62. Survival.** The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Contract.
- 63. 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 E - DATA SECURITY REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

The State has established Information Technology (IT) PSPs to protect IT resources under the authority outlined in the overarching State 1305.00 Enterprise IT Policy. In no case will the safeguards of Contractor’s data privacy and information security

program be less stringent than the safeguards used by the State, and Contractor must at all times comply with all applicable public and non-public State IT policies and standards, of which the publicly available ones are at:

https://www.michigan.gov/dtmb/0,5552,7-358-82547_56579_56755---,00.html

- 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 [ents/dtmb/1340.00.01 Acceptable Use of Information Technology Standard 458958 7.pdf](#). All Contractor Personnel will be required, in writing, to agree to the State's Acceptable Use Policy before accessing State systems. The State reserves the right to terminate Contractor's and/or subcontractor(s) or any Contractor Personnel's access to State systems if the State determines a violation has occurred.
- 5 Protection of the State's Information.** Throughout the Term and at all times in connection with its actual or required performance of the Services, Contractor will:
 - 5.1 If Hosted Services are provided by a Hosting Provider, ensure each Hosting Provider maintains FedRAMP authorization for all Hosted Services environments throughout the Term, and in the event a Hosting Provider is unable to maintain FedRAMP authorization, the State, at its sole discretion, may either a) require the Contractor to move the Software and State Data to an alternative Hosting Provider selected and approved by the State at Contractor's sole cost and expense without any increase in Fees, or b) immediately terminate this Contract for cause pursuant to **Section 15.1** of the Contract;
 - 5.2 for Hosted Services provided by the Contractor, maintain either a FedRAMP authorization or an annual SSAE SOC 2 Type II audit based on State required NIST Special Publication 800-53 MOD Controls using identified controls and minimum values as established in applicable State PSPs;
 - 5.3 ensure that the Software and State Data is securely hosted, supported, administered, accessed, and backed up in a data center(s) that resides in the continental United States, and minimally meets Uptime Institute Tier 3 standards (www.uptimeinstitute.com), or its equivalent;
 - 5.4 maintain and enforce an information security program including safety and physical and technical security policies and procedures with respect to its Processing of the State Data that complies with the requirements of the State's data security policies as set forth in this Contract, and must, at a minimum, remain compliant with FISMA and NIST Special Publication 800-53 MOD Controls using identified controls and minimum values as established in applicable State PSPs;
 - 5.5 provide technical and organizational safeguards against accidental, unlawful or unauthorized access to or use, destruction, loss, alteration, disclosure, encryption, transfer, commingling or processing of such information that ensure a level of security appropriate to the risks presented by the processing of State Data and the nature of such State Data, consistent with best industry practice and applicable standards (including, but not limited to, compliance with FISMA, NIST, CMS, IRS, FBI, SSA, HIPAA, FERPA and PCI requirements as applicable);
 - 5.6 take all reasonable measures to:

- (a) secure and defend all locations, equipment, systems and other materials and facilities employed in connection with the Services against “hackers” and others who may seek, without authorization, to disrupt, damage, modify, access or otherwise use Contractor Systems or the information found therein; and
 - (b) prevent (i) the State and its Authorized Users from having access to the data of other customers or such other customer’s users of the Services; (ii) State Data from being commingled with or contaminated by the data of other customers or their users of the Services; and (iii) unauthorized access to any of the State Data;
- 5.7 ensure that State Data is encrypted in transit and at rest using FIPS validated AES encryption modules and a key size of 256 bits or higher;
- 5.8 ensure the Hosted Services support Identity Federation/Single Sign-on (SSO) capabilities using Security Assertion Markup Language (SAML), Open Authentication (OAuth) or comparable State approved mechanisms;
- 5.9 ensure the Hosted Services implements NIST compliant multi-factor authentication for privileged/administrative and other identified access.
- 6 Security Accreditation Process.** Throughout the Term, Contractor will assist the State, at no additional cost, with its **Security Accreditation Process**, which includes the development, completion and on-going maintenance of a system security plan (SSP) using the State’s automated governance, risk and compliance (GRC) platform, which requires Contractor to submit evidence, upon request from the State, in order to validate Contractor’s security controls within two weeks of the State’s request. On an annual basis, or as otherwise required by the State such as for significant changes, re-assessment of the system’s controls will be required to receive and maintain authority to operate (ATO). All identified risks from the SSP will be remediated through a Plan of Action and Milestones (POAM) process with remediation time frames based on the risk level of the identified risk. For all findings associated with the Contractor’s solution, at no additional cost, Contractor will be required to create or assist with the creation of State approved POAMs and perform related remediation activities. The State will make any decisions on acceptable risk, Contractor may request risk acceptance, supported by compensating controls, however only the State may formally accept risk. Failure to comply with this section will be deemed a material breach of the Contract.
- 7 Unauthorized Access.** Contractor may not access, and shall not permit any access to, State systems, in whole or in part, whether through the Hosted Services or otherwise, without the State’s express prior written authorization. Such authorization may be revoked by the State in writing at any time in its sole discretion. Any access to State systems must be solely in accordance with the Contract and this Schedule, and in no case exceed the scope of the State’s authorization pursuant to this Section. All State-authorized connectivity or attempted connectivity to State systems shall be only through the State’s security gateways and firewalls and in compliance with the State’s security policies set forth in the Contract as the same may be supplemented or amended by the State and provided to Contractor from time to time.

8 Security Audits.

- 8.1 During the Term, Contractor will maintain complete and accurate records of its data protection practices, IT security controls, and the security logs relating to State Data, including but not limited to any backup, disaster recovery or other policies, practices or procedures relating to the State Data and any other information relevant to its compliance with this Contract.
- 8.2 Without limiting any other audit rights of the State, the State has the right to review Contractor's data privacy and information security program prior to the commencement of Services and from time to time during the term of this Contract. The State, at its own expense, is entitled to perform, or to have performed, an on-site audit of Contractor's data privacy and information security program. If the State chooses to perform an on-site audit, Contractor will, make all such records, appropriate personnel and relevant materials available during normal business hours for inspection and audit by the State or an independent data security expert that is reasonably acceptable to Contractor, provided that the State: (i) gives Contractor at least five (5) Business Days prior notice of any such audit; (ii) undertakes such audit no more than once per calendar year, except for good cause shown; and (iii) conducts or causes to be conducted such audit in a manner designed to minimize disruption of Contractor's normal business operations and that complies with the terms and conditions of all data confidentiality, ownership, privacy, security and restricted use provisions of the Contract. The State may, but is not obligated to, perform such security audits, which shall, at the State's option and request, include penetration and security tests, of any and all Hosted Services and their housing facilities and operating environments.
- 8.3 During the Term, Contractor will, when requested by the State, provide a copy of Contractor's 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 a vulnerabilities assessment after Contractor has completed such scan. These scans and assessments i) must be completed and provided to the State quarterly (dates to be provided by the State) and for each major release; and ii) scans must be completed in a non-production environment with verifiable matching source code and supporting infrastructure configurations or the actual production environment.
- 9.2 Static Application Security Testing (SAST) - Scanning Source Code for vulnerabilities, analysis, remediation, and validation.
- (a) For Contractor provided applications, Contractor, at its sole expense, must provide resources to complete static application source code scanning, including the analysis, remediation and validation of vulnerabilities identified by application Source Code scans. These scans must be completed for all Source Code initially, for all updated Source Code, and for all Source Code for each major release and Contractor must provide the State a vulnerability assessment after Contractor has completed the required scans.
- 9.3 Software Composition Analysis (SCA) – Third Party and/or Open-Source Scanning for vulnerabilities, analysis, remediation, and validation.
- (a) For Software that includes third party and open-source software, all included third party and open-source software must be documented and the source supplier must be monitored by the Contractor for notification of identified vulnerabilities and remediation. SCA scans may be included as part of SAST and DAST scanning or employ the use of an SCA tool to meet the scanning requirements. These scans must be completed for all third party and open-source software initially, for all updated third party and open-source software, and for all third party and open source software in each major release and Contractor must provide the State a vulnerability assessment after Contractor has completed the required scans if not provided as part of SAST and/or DAST reporting.
- 9.4 In addition, application scanning and remediation may include the following types of scans and activities if required by regulatory or industry requirements, data classification or otherwise identified by the State.
- (a) If provided as part of the solution, all native mobile application software must meet these scanning requirements including any interaction with an application programming interface (API).
- (b) Penetration Testing – Simulated attack on the application and infrastructure to identify security weaknesses.

10 Infrastructure Scanning.

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

11 Nonexclusive Remedy for Security Breach.

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