



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

**NOTICE OF CONTRACT**

NOTICE OF CONTRACT NO. **250000000054**  
 between  
 THE STATE OF MICHIGAN  
 and

<b>CONTRACTOR</b>	Chuck Cryderman & Associates, LLC
	15313 Bryce Road
	Capac, MI 48014
	Chuck Cryderman
	586-784-8890
	charlespcryderman@yahoo.com
	CV0045535

<b>STATE</b>	Program Manager	Terry Stanton	TREAS
		517-636-5307	
	StantonT@michigan.gov		
	Contract Administrator	Kyle Elzinga	TREAS
517-614-0956			
ElzingaK1@michigan.gov			

<b>CONTRACT SUMMARY</b>			
<b>DESCRIPTION: Auctioneering Services</b>			
<b>INITIAL EFFECTIVE DATE</b>	<b>INITIAL EXPIRATION DATE</b>	<b>INITIAL AVAILABLE OPTIONS</b>	<b>EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW</b>
October 29, 2024	December 31, 2027	Two, one-year	December 31, 2027
<b>PAYMENT TERMS</b>		<b>DELIVERY TIMEFRAME</b>	
Net 45		N/A	
<b>ALTERNATE PAYMENT OPTIONS</b>			<b>EXTENDED PURCHASING</b>
<input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>MINIMUM DELIVERY REQUIREMENTS</b>			
N/A			
<b>MISCELLANEOUS INFORMATION</b>			
N/A			
<b>ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION</b>			<b>\$180,000.00</b>

**FOR THE CONTRACTOR:**

**Chuck Cryderman & Associates, L.L.C.**  
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

# HYBRID CONTRACT TERMS

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These terms must only be used for purchases designated as “Hybrid” using the criteria set forth.

This HYBRID CONTRACT (“**Contract**”) is agreed to between the State of Michigan (the “**State**”) and Chuck Cryderman & Associates, L.L.C. (“**Contractor**”), a Michigan Limited Liability Company. This Contract is effective on October 29, 2024 (“**Effective Date**”), and unless terminated, will expire on December 31, 2027(the “**Term**”).

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

The parties agree as follows:

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

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

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

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

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

If to State:	If to Contractor:
See Contract Administrator information shown below.	Charles P. Cryderman 15313 Bryce Road Capac, MI 48014 charlespcryderman@yahoo.com 586-784-8890

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

State:	Contractor:
Kyle Elzinga 7285 Parsons Drive Dimondale, MI 48821 ElzingaK1@michigan.gov 517-614-0956	Charles P. Cryderman 15313 Bryce Road Capac, MI 48014 charlespcryderman@yahoo.com 586-784-8890

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

State:	Contractor:
Terry Stanton 7285 Parsons Drive Dimondale, MI 48821 StantonT@michigan.gov 517-636-5307	Charles P. Cryderman 15313 Bryce Road Capac, MI 48014 charlespcryderman@yahoo.com 586-784-8890

5. **Performance Guarantee.** Contractor must at all times have financial resources sufficient, in the opinion of the State, to ensure performance of the Contract and must provide proof upon request. The State may require a performance bond (as specified in a Statement of Work) if, in the opinion of the State, it will ensure performance of the Contract.
6. **Insurance Requirements.** See Schedule C – Insurance Requirements.
7. **Reserved.**
8. **Reserved.**
9. **Relationship of the Parties.** The relationship between the parties is that of independent contractors. Contractor, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is

created by virtue of this Contract. Contractor, and not the State, is responsible for the payment of wages, benefits and taxes of Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor. Neither party has authority to contract for nor bind the other party in any manner whatsoever.

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

**Contract Activities including Software.** If Contractor is providing Contract Activities that require the use of Contractor Software, the following terms apply:

- a. License Grant by Contractor:** Contractor hereby grants to the State and intended users a nonexclusive, royalty-free, irrevocable right and license during the Term and such additional periods, if any, as Contractor is required to provide Contract Activities under this Contract or any Statement of Work, to: (a) access and use the Software, including in operation with other software, hardware, systems, networks and services, for the State's governmental purposes, including for processing State Data; (b) generate, print, copy, upload, download, store and otherwise process all GUI, audio, visual, digital and other output, displays and other content as may result from any access to or use of the Software; (c) prepare, reproduce, print, download and use a reasonable number of copies of the Documentation for any use of the Software under this Contract; and (d) the State to access and use the Software for all such non-production uses and applications as may be necessary or useful for the effective use of the Contract Activities hereunder, including for purposes of analysis, development, configuration, integration, testing, training, maintenance, support and repair, which access and use will be without charge and not included for any purpose in any calculation of the State's use of the Software, including for purposes of assessing any Fees or other consideration payable to Contractor or determining any excess use of the Software as described below.
- b. License Restrictions on the State.** The State will not: (a) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make the Software available to any third party, except as expressly permitted by this Contract or in any Statement of Work; or (b) use or authorize the use of the Software or

Documentation in any manner or for any purpose that is unlawful under applicable law.

- c. Use by the State. The State will pay Contractor the corresponding Fees set forth in a Statement of Work or Pricing Schedule for all access and use of the Software as intended for the purposes of this Contract. Such Fees will be Contractor's sole and exclusive remedy for use of the Software, including any excess use.
- d. Certification by the State to the Contractor, if applicable. To the extent that a License granted to the State is not unlimited, Contractor may request written certification from the State regarding use of the Software for the sole purpose of verifying compliance with the Contract. Such written certification may occur no more than once in any twenty-four (24) month period during the Term of the Contract. The State will respond to any such request within 45 calendar days of receipt. If the State's use is greater than contracted, Contractor may invoice the State for any unlicensed use (and related support) pursuant to the terms of this Contract at the rates set forth in Schedule B, and the unpaid license and support fees must be payable in accordance with the terms of the Contract. Payment under this provision must be Contractor's sole and exclusive remedy to cure these issues.
- e. Definitions.
  - (1) "Documentation" means all user manuals, operating manuals, technical manuals and any other instructions, specifications, documents or materials, in any form or media, that describe the functionality, installation, testing, operation, use, maintenance, support, technical or other components, features or requirements of the Software or Contract Activities.
  - (2) "Hosted Services" means the hosting, management and operation of the: Operating Environment, Software, other services (including support and subcontracted services), and related resources for access and use by the State as intended for the purposes of this Contract and its Authorized Users, including any services and facilities related to disaster recovery obligations.
  - (3) "Operating Environment" means, collectively, the platform, environment and conditions on, in or under which the Software is intended to be installed and operate, as set forth in a Statement of Work, including such structural, functional and other features, conditions and components as hardware, operating software, system architecture, configuration, computing hardware, ancillary equipment, networking, software, firmware, databases, data, and electronic systems (including database management systems).
  - (4) "Software" means Contractor's software as set forth in a Statement of Work and provided to the State pursuant to this Contract, including, but not limited to, any third-party software or components, updates or new versions, online

portals or other web-based systems, and the Operating Environment (if Contractor hosted).

- (5) “Solution” means Contract Activities including Software and Services singularly or in any combination thereof, as applicable, set forth in a Statement of Work.

#### Accessibility Requirements

- f.** All Contract Activities created or provided by Contractor under this Contract in a digital format (hereinafter “Digital Deliverables”), must at all times conform to the State’s accessibility standards provided in the SOM Digital Standards, located at <https://www.michigan.gov/standards> (the “Digital Accessibility Standards”). Throughout the Term of the Contract, at no additional costs to the State, Contractor must:
- (1) comply with plans and timelines approved in writing by the State to remediate issues and achieve conformance with the Digital Accessibility Standards in the event of any deficiencies;
  - (2) promptly respond to and resolve, in a manner acceptable to the State, any complaint the State receives regarding the accessibility of any Digital Deliverables;
  - (3) ensure that no changes to any Digital Deliverables will have any adverse effect on conformance to the Digital Accessibility Standards; and
  - (4) upon the State’s written request, provide the Digital Deliverables in one or more alternative formats and within timeframes specified by the State.
- g.** State of Michigan Digital Standards Review. Prior to Digital Deliverables being accepted, put into production, or as otherwise required by the State, the State may conduct a review to assess their accessibility and compliance with the State’s Digital Accessibility Standards. Contractor must assist the State with each such review, including submitting documentation or other information regarding accessibility and compliance with the State’s Digital Accessibility Standards, including without limitation, a completed product accessibility template, including any Information Technology Industry Council Voluntary Product Accessibility Template or VPAT® and/or a description of the evaluation methods used to support the Digital Accessibility Standards conformance claims, including, if applicable, any third-party testing. Contractor must, at its sole cost and expense, remediate all issues resulting from any such review in a manner and timeframe approved in writing by the State, which may include providing a remediation status report.
- h.** Contractor must, without limiting Contractor’s obligations of indemnification as further described in this Contract, indemnify, defend, and hold harmless the State for any and all claims, including reasonable attorneys’ fees, costs, and incidental expenses, which may be suffered by, accrued against, charged to, or

recoverable from the State arising out of its failure to comply with the foregoing accessibility standards.

- i. Failure to comply with the requirements in this Section constitutes a material breach of this Contract.

**10. Reserved.**

**11. Subcontracting.** Contractor must obtain prior written approval of the State, which consent may be given or withheld in the State's sole discretion, not later than 90 days before engaging any Permitted Subcontractor to provide Contract Activities to the State under this Contract. Engagement of any subcontractor or Permitted Subcontractor by Contractor does not relieve Contractor of its representations, warranties or obligations under this Contract.

a. Without limiting the foregoing, Contractor will:

- (1) be responsible and liable for the acts and omissions of each such subcontractor (including such Permitted Subcontractor and Permitted Subcontractor's employees who, will be deemed Contractor Personnel) to the same extent as if such acts or omissions were by Contractor or its employees;
- (2) be responsible for all fees and expenses payable to, by or on behalf of each subcontractor and 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
- (3) notify the State of the location of the Permitted Subcontractor and indicate if it is located within the United States.

b. Contractor, including any subcontractor (Permitted or otherwise), are expressly prohibited from Accessing or Processing State Data outside of the United States.

c. Definitions:

- (1) "Access" means (1) the ability and means to enter a restricted or locked area, room, or physical container containing State Data; or (2) the ability and means to communicate with or otherwise interact with a system, to use system resources to handle information, to gain the information or knowledge of the information the system contains, or to control system components and functions (including physical or technical controls, or having the ability to modify or bypass any or all security controls).
- (2) "Contractor Personnel" means all employees of Contractor, or any subcontractors or Permitted Subcontractors involved in the performance of Contract Activities hereunder.

- (3) “Permitted Subcontractor” means any third party hired by Contractor to perform Contract Activities for the State under this Contract or that will have Access to or have the ability to control access to State Data or both.
- (4) “Process” means to perform any operation or set of operations on any data, information, material, work, expression or other content, including to (a) collect, receive, input, upload, download, record, reproduce, store, organize, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate or make other improvements or derivative works, (b) process, retrieve, output, consult, use, disseminate, transmit, submit, post, transfer, disclose or otherwise provide or make available, or (c) block, erase or destroy. “Processing” and “Processed” have correlative meanings.

**12. Staffing.** The State’s Contract Administrator may require Contractor to remove or reassign personnel providing services by providing a notice to Contractor.

**13. Background Checks.** Pursuant to Michigan law, all agencies subject to IRS Pub. 1075 are required to ask the Michigan State Police to perform fingerprint background checks on all employees, including Contractor and Permitted 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 Permitted Subcontractors with the result of such background check. For more information, please see Michigan Public Act 427 of 2018. Upon request, or as may be specified in a Statement of Work, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks.

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

**15. Change of Control.** Contractor will notify the State, within 30 days of any public announcement or otherwise once legally permitted to do so, of a change in Contractor’s organizational structure or ownership. For purposes of this Contract, a change in control means any of the following: (a) a sale of more than 50% of Contractor’s stock; (b) a sale of substantially all of Contractor’s assets; (c) a change in a majority of Contractor’s board members; (d) consummation of a merger or consolidation of Contractor with any other entity; (e) a change in ownership through a transaction or series of transactions; (f) or the board (or the stockholders) approves a

plan of complete liquidation. A change of control does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.

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

- 16. Ordering.** Contractor is not authorized to begin performance until receipt of authorization as identified in a Statement of Work.
- 17. Acceptance.** Contract Activities are subject to inspection and testing by the State within 30 calendar days of the State's receipt of them ("**State Review Period**"), unless otherwise provided in a Statement of Work. If the Contract Activities are not fully accepted by the State, the State will notify Contractor by the end of the State Review Period that either: (a) the Contract Activities are accepted but noted deficiencies must be corrected; or (b) the Contract Activities are rejected. If the State finds material deficiencies, it may: (i) reject the Contract Activities without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate this Contract in accordance with Section 26, Termination for Cause.

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

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

- 18. Reserved.**
- 19. Reserved.**
- 20. Reserved.**
- 21. Invoices and Payment.** Invoices must conform to the requirements communicated from time-to-time by the State. All undisputed amounts are payable within 45 days of the State's receipt. Contractor may only charge for Contract Activities provided as specified in a Statement of Work. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be

exempt from federal excise tax, if Contract Activities purchased under this Contract are for the State's exclusive use. Notwithstanding the foregoing, all fees are exclusive of taxes, and Contractor is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by the State under this Contract.

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

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

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

- 22. Liquidated Damages.** Liquidated damages, if applicable, will be assessed as described in a Statement of Work. The parties understand and agree that any liquidated damages (which includes but is not limited to applicable credits) set forth in this Contract are reasonable estimates of the State's damages in accordance with applicable law. The parties acknowledge and agree that Contractor could incur liquidated damages for more than 1 event. The assessment of liquidated damages will not constitute a waiver or release of any other remedy the State may have under this Contract for Contractor's breach of this Contract, including without limitation, the State's right to terminate this Contract for cause under Section 24 and the State will be entitled in its discretion to recover actual damages caused by Contractor's failure

to perform its obligations under this Contract. However, the State will reduce such actual damages by the amounts of liquidated damages received for the same events causing the actual damages. Amounts due the State as liquidated damages may be set off against any fees payable to Contractor under this Contract, or the State may bill Contractor as a separate item and Contractor will promptly make payments on such bills.

**23. Stop Work Order.** The State may suspend any or all activities under the Contract at any time. The State will provide Contractor a written stop work order detailing the suspension. Contractor must comply with the stop work order upon receipt. Within 90 calendar days, or any longer period agreed to by Contractor, the State will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate the Contract or delivery order. The State will not pay for Contract Activities, Contractor's lost profits, or any additional compensation during a stop work period.

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

(b) If the State terminates this Contract under this Section, the State will issue a termination notice specifying whether Contractor must: (i) cease performance immediately or (ii) continue to perform for a specified period. If it is later determined that Contractor was not in breach of the Contract, the termination will be deemed to have been a Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in Section 28, Termination for Convenience.

Contractor must submit all invoices for Contract Activities accepted by the State within 30 days of the date of termination. Failure to submit an invoice within that timeframe will constitute a waiver by Contractor for any amounts due to Contractor for Contract Activities accepted by the State under this Contract. The State will only pay for amounts due to Contractor for Contract Activities accepted by the State on or before the date of termination, subject to the State's right to set off any amounts owed by the Contractor for the State's reasonable costs in terminating this Contract. Contractor must promptly reimburse to the State any fees prepaid by the State prorated to the date of such termination, including any prepaid fees. The Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys' fees, court costs, transition costs, and any costs the State incurs to procure the Contract Activities from other sources.

- 25. Termination for Convenience.** The State may immediately terminate this Contract in whole or in part without penalty and for any reason or no reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities immediately or (b) continue to perform the Contract Activities in accordance with Section 29, Transition Responsibilities. Contractor must submit all invoices for Contract Activities accepted by the State within 30 days of the date of termination. Failure to submit an invoice within that timeframe will constitute a waiver by Contractor for any amounts due Contractor for Contract Activities accepted by the State under this Contract. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities to the extent the funds are available.
- 26. Transition Responsibilities.** Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed 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) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and (d) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (e) returning all state property as set forth in Section 30, below; and (f) surrendering or destroying all State Confidential Information as set forth in Section 37(e), below (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.
- 27. Return of State Property Not Including Confidential Information.** Upon termination or expiration of this Contract for any reason, Contractor must take all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to the Contractor by any entity, agent, vendor, or employee of the State.
- 28. Indemnification.** Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements,

representations, warranties, or insurance requirements contained in this Contract; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

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

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

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

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

**29. Infringement Remedies.** If, in either party's opinion, any piece of equipment, software, commodity, or service supplied by Contractor or its subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor must, at its expense: (a) procure for the State the right to continue using the equipment, software, commodity, or service, or if this option is not reasonably available to Contractor, (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by the State with appropriate credits to the State against Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

**30. Limitation of Liability and Disclaimer of Damages. IN NO EVENT WILL THE STATE'S AGGREGATE LIABILITY TO CONTRACTOR UNDER THIS CONTRACT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT, EXCEED THE LESSER OF: (A) ONE MILLION DOLLARS; OR (B) THE MAXIMUM AMOUNT OF FEES PAYABLE UNDER THIS CONTRACT.** The State is not liable for

consequential, incidental, indirect, or special damages, regardless of the nature of the action.

**31. Disclosure of Litigation, or Other Proceeding.** Contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "**Proceeding**") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of the Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (3) any complaint filed in a legal or administrative proceeding alleging the Contractor or its subcontractors discriminated against its employees, subcontractors, vendors, or suppliers during the term of this Contract; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.

**32. Reserved.**

**33. 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, user data, and any other data collected, used, processed, stored, or generated as the result of the Contract Activities; (b) all data made available to Contractor for or during the provision of the Contract Activities, including but not limited to all text, sound, video, image files, or software; and (c) 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) protected 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.

**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; (c) keep, maintain, Access or Process State Data in the continental United States and (d) not use, sell, rent, transfer, distribute, commercially exploit, 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. Contractor's misuse of State Data may violate state or federal laws, including but not limited to MCL 752.795.

- c. Extraction of State Data.** Contractor must, within 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.
- d. Backup and Recovery of State Data.** Unless otherwise specified in a Statement of Work, Contractor is responsible for maintaining a backup of State Data and for an orderly and timely recovery of such data. Unless otherwise described in a Statement of Work, Contractor must maintain a contemporaneous backup of State Data that can be recovered within 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 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 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 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 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 35** are to be considered direct damages and not consequential damages.

- f. Contractor must comply with the requirements of the Data Security Schedule, found in Schedule E.
- g. **Third Party Requests.** Contractor will immediately notify the State upon receipt of any third-party requests which in any way might reasonably require access to State Data. Contractor will notify the State Program Managers or their designees by the fastest means available and also in writing. Contractor must provide such notification within twenty-four (24) hours from Contractor's receipt of the request. Contractor will not respond to subpoenas, service of process, FOIA requests, and other legal requests related to the State without first notifying the State. Upon request by the State, Contractor must provide to the State, its proposed response to the third-party request with adequate time for the State to review, and, as it deems necessary, to revise the response, object, or take other action.

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

- a. **Meaning of Confidential Information.** For the purposes of this Contract, the term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at

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

- b. Obligation of Confidentiality.** The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; and (c) Contractor obligates the subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.
- c. Cooperation to Prevent Disclosure of Confidential Information.** Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
- d. Remedies for Breach of Obligation of Confidentiality.** Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately

compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.

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

#### Data Privacy and Information Security.

- f. **Undertaking by Contractor.** Without limiting Contractor's obligation of confidentiality as further described, Contractor is responsible for establishing and maintaining a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (a) ensure the security and confidentiality of 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 State Data; and (e) ensure that all employees, agents, and subcontractors of Contractor, if any, comply with all of the foregoing. In no case will the safeguards of Contractor's data privacy and information security program be less stringent than the safeguards used by the State, and Contractor must at all times comply with all applicable State IT policies and standards, which are available to Contractor upon request.
- g. **Audit by Contractor.** No less than annually, Contractor must conduct a comprehensive independent third-party audit of its data privacy and information security program and provide such audit findings to the State.

- h. Right of Audit by the State.** Without limiting any other audit rights of the State, the State has the right to review Contractor's data privacy and information security program prior to the commencement of Contract Activities and from time to time during the term of this Contract. During the providing of the Contract Activities, on an ongoing basis from time to time and without notice, the State, at its own expense, is entitled to perform, or to have performed, an on-site audit of Contractor's data privacy and information security program. In lieu of an on-site audit, upon request by the State, Contractor agrees to complete, within 45 calendar days of receipt, an audit questionnaire provided by the State regarding Contractor's data privacy and information security program.
- i. Audit Findings.** Contractor must implement any required safeguards as identified by the State or by any audit of Contractor's data privacy and information security program.
- j. State's Right to Termination for Deficiencies.** The State reserves the right, at its sole election, to immediately terminate this Contract or a Statement of Work without limitation and without liability if the State determines that Contractor fails or has failed to meet its obligations under this Section.

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

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

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

**36. Representations and Warranties.** Contractor represents and warrants: (a) Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use; (b) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect; (c) the Contract Activities will

not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (d) Contractor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Contract Activities; (e) the Contract Activities are merchantable and fit for the specific purposes identified in the Contract; (f) the Contract signatory has the authority to enter into this Contract; (g) all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the State of any material adverse changes; (h) all information furnished and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading; and that (i) Contractor is neither currently engaged in nor will engage in the boycott of a person based in or doing business with a strategic partner as described in 22 USC 8601 to 8606; (j) that all Contract Activities, including Software, as provided by Contractor do not and will not at any time during the Term contain any Harmful Code or any third party or open source components unless approved in advance by the State; and (k) that Contractor will not, and will not permit, any advertising through any Hosted Services. A breach of this Section is considered a material breach of this Contract, which entitles the State to terminate this Contract under Section 26, Termination for Cause.

**a. Definitions.**

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

**37. 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.

- 38. Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.
- 39. Prevailing Wage.** Contractor must comply with prevailing wage requirements, to the extent applicable to this Contract.
- 40. State Printing.** All printing in Michigan must be performed by a business that meets *one* of the following: (a) have authorized use of the Allied Printing Trades Council union label in the locality in which the printing services will be performed; (b) have on file with the Michigan Secretary of State, a sworn statement indicating that employees producing the printing are receiving prevailing wages and are working under conditions prevalent in the locality in which the printing services will be performed; or (c) have a collective bargaining agreement in effect and the employees are represented by an operations that is not influenced or controlled by management.
- 41. 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, 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.
- 42. Unfair Labor Practice.** Under MCL 423.324, the State may void this Contract if the name of the Contractor, or the name of a subcontractor, manufacturer, or supplier of the Contractor, subsequently appears on the Unfair Labor Practice register compiled under MCL 423.322.
- 43. Governing Law.** This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in the Michigan Court of Claims. Contractor waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint an agent in Michigan to receive service of process.
- 44. Non-Exclusivity.** Nothing contained in this Contract is intended nor is to be construed as creating any requirements contract with Contractor, nor does it provide Contractor with a right of first refusal for any future work. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Contract Activities from other sources.
- 45. 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.

**46. 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.

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

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

Document Title	Document Description
Contract Terms	Hybrid Contract Terms
Schedule A	Statement of Work
Schedule B	Pricing
Schedule C	Insurance Requirements
Schedule E	Data Security Requirements for Hybrid Purchases

**49. Entire Agreement and Order of Precedence.** This Contract, which includes Statement of Work, and schedules and exhibits, is the entire agreement of the parties related to the Contract Activities. This Contract supersedes and replaces all previous understandings and agreements between the parties for the Contract Activities. If there is a conflict between documents, the order of precedence is: (a) first, this Contract, excluding its schedules, exhibits, and Statement of Work; (b) second, Schedule E – Data Security Requirements for Hybrid Purchases, if applicable; (c) third, Schedule A, the applicable Statement of Work; and (d) fourth, schedules

expressly incorporated into this Contract as of the Effective Date. NO TERMS ON CONTRACTOR'S INVOICES, ORDERING DOCUMENTS, WEBSITE, BROWSE-WRAP, SHRINK-WRAP, CLICK-WRAP, CLICK-THROUGH OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS PROVIDED WITH ANY OF THE CONTRACT ACTIVITIES, OR DOCUMENTATION HEREUNDER, EVEN IF ATTACHED TO THE STATE'S DELIVERY OR PURCHASE ORDER, WILL CONSTITUTE A PART OR AMENDMENT OF THIS CONTRACT OR IS BINDING ON THE STATE OR ANY AUTHORIZED USER FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE STATE AND THE AUTHORIZED USER, EVEN IF ACCESS TO OR USE OF THE CONTRACT ACTIVITIES REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS. CONTRACTOR MAY NOT INHIBIT USE BY THE STATE'S INTENDED USERS IN A MANNER THAT PREVENTS PERFORMANCE OF THE CONTRACT ACTIVITIES.

- 50. 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.
- 51. Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
- 52. Survival.** Any right, obligation or condition that, by its express terms or nature and context is intended to survive, will survive the termination or expiration of this Contract; such rights, obligations, or conditions include, but are not limited to, those related to transition responsibilities; indemnification; disclaimer of damages and limitations of liability; State Data; non-disclosure of Confidential Information; representations and warranties; insurance and bankruptcy.
- 53. Contract Modification.** This Contract may not be amended except by signed agreement between the parties (a "**Contract Change Notice**"). Notwithstanding the foregoing, no subsequent Statement of Work or Contract Change Notice executed after the Effective Date will be construed to amend this Contract unless it specifically states its intent to do so and cites the section or sections amended.

# SCHEDULE A – STATEMENT OF WORK

## CONTRACT ACTIVITIES

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### Auctioneering Services

#### BACKGROUND

This is a Contract for Auctioneering Services. The Department of Treasury (State), in accordance with Public Act 29 of 1995, disposes of lost, unclaimed or abandoned personal property (Unclaimed Property) in the custody of the State. This is accomplished primarily through sale to the highest bidder via public auction. While most auctions will be online, on rare occasions a live auction may be required.

#### SCOPE

The Contractor must provide professional auction services to the State to dispose of Unclaimed Property at public auction. These services include but are not limited to: online and live auctions, appraisal services, storage of goods, and moving services of goods to be auctioned.

The State is not obligated to the frequency or number of auctions to be conducted, volume of materials either annually or in any one sale, or a minimum or maximum monetary proceeds either annually or in any one sale.

The number of auctions may vary in any one calendar year.

#### 1. Requirements

##### 1.1. General Requirements

##### A. Online Auction Services

1. The Contractor must be available for all auctions scheduled on the annual auction calendar published by the Department of Treasury.
2. The Contractor may be requested to conduct up to three unscheduled auctions per year as determined by the Program Managers. The time and date of unscheduled auctions will be mutually determined with the Program Manager at least one month in advance. These auctions may be conducted at a regional facility of the State or other location as directed by the Program Manager. This auction information is not always available in time to be included on the annual auction calendar.
3. The Contractor must maintain auctioneer certification through the Michigan Auctioneers Association. The Contractor must also maintain all other applicable licenses as required by law or local ordinance. The Contractor must submit evidence of such certification, licenses, and/or bonds upon execution of this Contract to the Program Manager as provided elsewhere in this Contract. The required certification, licenses,

and/or bonds must also be provided to the State upon request of the Program Manager.

4. The Contractor must be present and available to answer questions and resolve problems within two hours of the notification of the issue.
5. The Contractor must notify the Program Manager or their designee at least five days in advance and obtain approval of replacement if the designated auctioneer(s) is unable to conduct an auction.
6. The Contractor must conduct auctions in accordance with accepted auctioning standards and instructions of the Program Manager or designee. The Contractor must conduct all auction sales in a legal, fair and honest manner.
7. At Contractor's expense, the Contractor must place advertising as directed by the Program Manager as follows:
  - a. Place advertisements, which have been approved by the State, in newspapers, shopping guides and other publications as well as other media such as radio or online which are appropriate to attract potential bidders for the items to be sold.
  - b. Prior to placement of advertising, the Contractor must obtain the approval by the Program Manager for the advertisement and the publications or other media in which advertising will be placed.
  - c. Prepare all pre-approved ad copies (legal and promotional) in publications that are regarded as "well circulated". Contractor to supply sample ad with a listing of recommended publications.
8. The Contractor must provide transportation and all expenses for auctioneers and their staff if necessary. This expense cannot be charged to the State.
9. The Contractor is responsible for cataloging and taking photographs of lots for sale to be placed on Contractor's website for the online auction.
10. The Contractor and Program Manager will agree on a method of shipping or pick up of items for sale on a per event basis. The same method agreed upon prior to the online auction will also be used for the process of returning any items that remain unsold upon conclusion of the online auction.
11. Contractor is responsible for making arrangements with buyers for pick up or delivery of purchased auction items.

12. All items and bid tickets must be identified in accordance with instructions of the Program Manager.
13. The Contractor is completely responsible for the accountability of the sale. The Contractor must complete all required documents including securing signatures for property titles and bill of sale forms. A written receipt showing the highest bidder, lot number and the amount received for each item must be presented along with reports and be matched to the itemized price auction catalog. The receipts and total sale amount must all agree, match, and balance. Failure on the Contractor's part to supply the report will result in the State withholding the Contractor's commission. Any errors or omissions must be brought to the attention of the State's Program Manager for resolution to the State's satisfaction.
14. The Contractor must collect State sales tax on appropriate transactions and provide record of such with reports.
15. It is preferred the Contractor submit any applicable sales tax directly to the State by remitting it directly to the Department of Treasury Sales Tax Division.
16. The Contractor must use an automated auction management system.
17. The Contractor must turn over all monies received from the auctions with a copy of the receipts to the Program Manager or their designated representative within five business days upon conclusion of the auction.
  - a. Contractor may elect to wire or EFT the monies received directly into a State of Michigan bank account as designated by the Program Manager in place of a physical transfer of monies received.
18. The State does not warranty surplus property, unclaimed property, equipment or vehicles and/or the performance of such auctioned goods. The Contractor must advise prospective bidders of this exclusion prior to and at auction.
19. The Contractor must accept that additions and/or deletions of property may take place prior to and during auction. Such deletions during auction will be treated as no sale and accounted for as such in reports.
20. The Contractor must provide an automated list of registered bidders.
21. Online auctions may, at the discretion of the Program Manager, be conducted in conjunction with a live auction. In this instance, Contractor will merge the reporting and online sale with that of the live sale.

## **B. Live Auctioneering**

Conduct Auctions as follows:

1. The Contractor must be available for all auctions scheduled on the annual auction calendar published by the Department of Treasury.
2. The Contractor may be requested to conduct up to three unscheduled auctions per year as determined by the Program Manager. The time and date of unscheduled auctions will be mutually determined with the Program Manager at least one month in advance. These auctions may be conducted at a regional facility of the State. This auction information is not always available in time to be included on the annual auction calendar.
3. The Contractor must maintain auctioneer certification through the Michigan Auctioneers Association. The Contractor must also maintain all other applicable licenses as required by law or local ordinance. The Contractor must submit evidence of such certification, licenses, and/or bonds upon execution of this Contract to the Program Manager as provided elsewhere in this Contract. The required certification, licenses, and/or bonds must also be provided to the State upon request of the Program Manager.
4. The Contractor must be present and available to answer questions and resolve problems a minimum of two hours before the start and following the conclusion of each auction.
5. The Contractor must provide registration cards and register all prospective bidders on Inspection Day and prior to start of bidding on the day of the auction. Bidders must be registered in order to purchase goods and be provided a bidder number/card.
6. The Contractor must notify the Program Manager of their designee at least five days in advance and obtain approval of replacement if the designated auctioneer(s) is unable to conduct an auction.
7. The Contractor must conduct auctions in accordance with accepted auctioning standards and instructions of the Program Manager or designee. Conduct all auction sales in a fair and honest manner.
8. At Contractor's expense, the Contractor must place advertising as directed by the Program Manager as follows:
  - a. Place advertisements, which have been approved by the State, in newspapers, shopping guides and other publications as well as

other media such as radio or online which are appropriate to attract potential bidders for the items to be sold.

- b. Prior to placement of advertising, obtain the approval by the Program Manager for the advertisement and the publications or other media organizations in which advertising will be placed.
  - c. Prepare all pre-approved ad copies (legal and promotional) in publications that are regarded as "well circulated". Contractor to supply sample ad with a listing of recommended publications.
    - 1. Contractor at a minimum will be required to run ads of sufficient size in local major paper and online version at least two weeks prior to auction.
    - 2. Copies of ads run in local newspapers are to be sent to the Program Manager.
  - d. Title all advertisements "State of Michigan Auction". (The Contractor's name may be incorporated at the end of advertisements following the statement "Auction service provided by".)
  - e. Contractor must spend, at a minimum, \$4,000.00 in auction advertising per auction and be able to document where it was spent.
9. The Contractor must provide all printed forms including but not limited to receipts, registration forms, and auction sales listing sheets. The Contractor must provide:
- a. Public Address (PA) system (fixed and portable and have a standby system available for each auction) with an acceptable range.
  - b. Lot markers to show which lots are being auctioned.
10. The Contractor must provide an auctioneer stand with adequate space for the auctioneer and clerks.
11. The Contractor must place signs near the road or nearest intersection the day of the auction notifying the public of the auction.
12. The Contractor must provide transportation and all expenses for auctioneers and their staff if necessary. This expense cannot be charged to the State.
13. The Contractor is not responsible to catalog lots for sale.

14. As required, and as necessary, the Contractor must provide fully qualified and experienced auctioneers and recording clerks for recording and marking items. The Contractor must review, with the Program Manager, personnel requirements not less than 72 hours prior to each auction. The Program Manager may require the Contractor to furnish additional auctioneers and/or clerks to work at any auction. All items and bid tickets must be identified in accordance with instructions of the Program Manager.
15. The Contractor is completely responsible for the accountability of the Sale. The Contractor must complete all required documents including securing signatures for property titles and bill of sale forms. A written receipt showing the highest bidder, lot number and the amount received for each item must be presented along with reports and be matched to the itemized price auction catalog. The receipts and total sale amount must all agree, match, and balance. Failure on the Contractor's part to supply the report will result in the State withholding the Contractor's commission. Any errors or omissions must be brought to the attention of the State's Program Manager for resolution to the State's satisfaction.
16. The Contractor must collect state sales tax on appropriate transactions and provide record of such with reports.
17. It is preferred the Contractor submit any applicable sales tax directly to the State by remitting it directly to the Department of Treasury Sales Tax Division.
18. The Contractor must use an automated auction management system.
19. The Contractor must be prepared to work multiple and simultaneous auctioneers at any given auction if required by the State in order to expedite the auction sale process. The Contractor must, unless otherwise directed by the Program Manager, provide at their expense the following personnel to conduct the auction effectively: auctioneers, registration clerks, cashiers, spotters, runners, recording clerks, and title clerks.
20. The Contractor must turn over all monies received from the auctions with a copy of the receipts to the Program Manager or their designated representative within five business days upon conclusion of the auction.
  - a. Contractor may elect to wire or EFT the monies received directly into a State of Michigan bank account as designated by the

Program Manager in place of a physical transfer of monies received.

21. The State does not warranty surplus property, unclaimed property, equipment or vehicles and/or the performance of such auctioned goods. The Contractor must advise prospective bidders of this exclusion prior to and at auction.
22. The Contractor must accept that additions and/or deletions of property may take place prior to and during auction. Such deletions during auction will be treated as no sale and accounted for as such in reports.
23. The Contractor must provide an automated list of registered bidders.
24. The Contractor must ensure concessionaire services are available and should include food, snacks, and beverages.

## **1.2. Transition**

See Hybrid Contract Terms, Section 25, Transition Responsibilities

## **1.3. 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 for the publicly available PSPs in their response. Non-public PSPs are available to bidders under NDA.

Public IT Policies, Standards and Procedures (PSP):

DTMB - IT Policies, Standards & Procedures ([michigan.gov](http://michigan.gov))

### **Acceptable Use Policy**

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

### **SOM Digital Standards**

All software items provided by the Contractor must adhere to the State of Michigan Application/Site Standards which can be found at SOM Applications and Site Standards ([michigan.gov](http://michigan.gov)).

## **Mobile Responsiveness**

The Contractor's Software must utilize responsive design practices to ensure the application is accessible via a mobile device.

## **ADA Compliance**

The State is required to comply with the Americans with Disabilities Act of 1990 (ADA) and has adopted standards and procedures regarding accessibility requirements for websites and software applications. All websites, applications, software, and associated content and documentation provided by the Contractor as part of the Solution must comply with the Digital Accessibility Standards. See Terms and Conditions Section 12 Accessibility Requirements for additional information. Applicable standards can be found at SOM Applications and Site Standards (michigan.gov) under the SOM Digital Accessibility Guidelines heading.

### **1.4. Hosting**

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

### **1.5. Required Functionality Relating to Data Retention, Disposal, and Retrieval**

The State has legal obligations to retain, dispose, and retrieve State Data along with obligations to manage and secure State Data. To meet these obligations, the Solution must allow the State to:

- 1) retain all data for the entire length of the Contract.
- 2) delete its data or request the deletion of its data, even data that may be stored offline or in backups.
- 3) transfer its data back to the State or to a new vendor or new solution.
- 4) transfer its data to the Archives of Michigan as may be required by a retention and disposal schedule.
- 5) retrieve data, even data that may be stored offline or in backups.

Except as otherwise stated in the Contract, Contractor will not dispose of, delete, or destroy State Data without the prior written approval of the State.

## **2. Acceptance**

### **2.1. Acceptance, Inspection, and Testing**

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

- a. In accordance with the procedures set forth in Section 16, Acceptance of Standard Contract Terms.
- b. Upon the receipt of sales from each auction sale and the receipt of the detailed summary statement "Final Auction Results" and the end of auction sale as stated in Section 4.3 Reporting.

### 3. Staffing

#### 3.1. Contractor Representative

The Contractor must appoint a Contract Representative, 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 48821 <a href="mailto:ElzingaK1@michigan.gov">ElzingaK1@michigan.gov</a> 517-614-0956	Charles P. Cryderman 15313 Bryce Road Capac, MI 48014 charlespcryderman@yahoo.com 586-784-8890

#### 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:
Terry Stanton 7285 Parsons Drive Dimondale, MI 48821 StantonT@michigan.gov 517-636-5307	Charles P. Cryderman 15313 Bryce Road Capac, MI 48014 charlespcryderman@yahoo.com 586-784-8890

#### 3.4. Customer Service Toll-Free Number

The Contractor must specify its toll-free number for the State to contact the Contractor Representative. The Contractor Representative must be available for calls during the hours of 7:00 am to 6:00 pm EST.

#### 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 a General Manager and Chief Auctioneer, individuals who will be directly responsible for the day-to-day operations of the Contract (“Key Personnel”). Key Personnel must be specifically assigned to the State account, be

knowledgeable on the contractual requirements, and respond to State inquiries within 24 hours.

Contractor's Key Personnel must be on-site at auction location for the duration of each auction as well as for prior auction set-up and post auction clean up, on an as needed basis to be determined by the program manager with each auction.

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

Contractor will not remove any Key Personnel from their assigned roles on this Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal ("Unauthorized Removal"). An Unauthorized Removal does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation, or for cause termination of the Key Personnel's employment. Any Unauthorized Removal may be considered by the State to be a material breach of this Contract, in respect of which the State may elect to terminate this Contract for cause under the **Termination for Cause** section of the Standard Contract Terms. It is further acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of this Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under Termination for Cause, Contractor will issue to the State the corresponding credits set forth below (each, an "Unauthorized Removal Credit"):

- i. For the Unauthorized Removal of any Key Personnel designated in the applicable Statement of Work, the credit amount will be \$5,000 per individual if Contractor identifies a replacement approved by the State and assigns the replacement to shadow the Key Personnel who is leaving for a period of at least 30-calendar days before the Key Personnel's removal.
- ii. If Contractor fails to assign a replacement to shadow the removed Key Personnel for at least 30-calendar days, in addition to the \$5,000 credit specified above, Contractor will credit the State \$100 per calendar day for each day of the 30-calendar day shadow period that the replacement Key Personnel does not shadow the removed Key Personnel, up to \$5,000 maximum per individual. The total Unauthorized Removal Credits that may be assessed per Unauthorized

Removal and failure to provide 30-calendar days of shadowing will not exceed \$10,000 per individual.

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

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

1. Name	2. Years of Experience in Current Classification	3. Role(s) / Responsibilities	4. Direct / Subcontract / Contract	5. % of Work Time	6. Physical Location
Charles P. Cryderman	46 years	Owner / Manager Auctioneer	Direct	100	15313 Bryce Road, Capac, MI. 48014
Cec Ball	33 years	Office Manager / Administrator / Assistant to Auctioneer	Direct	100	15313 Bryce Road, Capac, MI. 48014

**3.7. Organizational Chart**

The Bidder must provide an overall organizational chart that details staff members, by name and title, and subcontractors.

- Charles P. Cryderman, Owner / Manager / Auctioneer
- Cec Ball, Office Manager / Assistant to Owner / Head Clerk
- Luck Williams, Sales Manager / Clerk / Computer Operations / Photography / Ring Man
- Gary Berry, Auctioneer / Auction Set-up Manager / Ring Man
- Wayne Jackman, Clerk / Computer Operations / Auction Set-up
- Judy Landino, Auctioneer / Clerk / Ring Man
- Deanna Gaedcke, Clerk / Computer Operations
- Stanley Jackman, Clerk / Shipping
- Shirley Jackman, Clerk / Shipping
- Sue Jackman, Clerk / Shipping
- Harold Cummings, Computer Operations / Set-up / Clerk
- Janet Cummings, Computer Operations / Set-up / Shipping / Clerk

### **3.8. Disclosure of Subcontractors**

No subcontractors will be utilized on this Contract.

### **3.9. Security**

The Contractor will be subject the following security procedures:

. The State may require the Contractor's personnel to wear State issued identification badges at State facilities.

The Contractor must secure the contents of the auction lots prior, during, and after the conclusion of the auction. The Contractor is responsible for any lost items while in the possession of the Contractor. The Contractor maybe escorted by a State of Michigan employee the day of the auction or upon direction of the Program Manager.

## **4. Project Management**

### **4.1 Meetings**

The Contractor must attend the following meetings:

- a. Semi-annual meetings
- b. Pre-auction meetings

All required meetings must be in person unless otherwise directed by the Program Manager. The State may request other meetings, as it deems appropriate.

### **4.2 Reporting**

The Contractor must provide a detailed summary statement "Final Auction Results" at the end of auction sale. An electronic report (Excel only) should be submitted to the Program Manager for each lot, indicating the itemized account of the sale, including the lot number (lot number of both the State and Auctioneer), number of items in lot, description of content, appraised amount, and sold amount.

Report summary must include total number or registered bidders, total number items sold, total number items not sold, total sales, total tax collected, the amount of buyer's premium collected, and other information as deemed appropriate by Program Manager.

## **5. Pricing**

### **5.1 Price Term**

Pricing is firm for the entire length of the Contract.

See Schedule B for Commission percentages to be paid by highest bidder based on Gross Sale of purchase, also known as Buyer's Premium.

Unavoidable postponement of an auction beyond the control of the State, must not entitle the Contractor to any sort of compensation by the State.

Contractor's out of pocket expenses are not separately reimbursable by the State unless, on a case-by case basis for unusual expenses, the State's Program Manager or designee has agreed in advance and in writing to reimburse Contractor.

## 6. Ordering

### 6.1 Authorizing Document

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

## 7. Payment

### 7.1 Payment Methods

The State will make payment for all Contract Activities via Electronic Funds Transfer (EFT). The State prefers the Contractor make any payments to the State via EFT.

## 8. Service-Level Agreement (SLA)

State of Michigan Public Act 431 of 1984; 18.1261 Sec 261.(14) requires that multiyear contracts include either Liquidated Damages and/or Service-Level Agreements. The State has determined SLA's are applicable to the services of this proposal and subsequent Contract.

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

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

SLA Metrics	
<b>Definition and Purpose</b>	<p>A. <b>Down Time.</b> The Contractor must ensure online auction services operate during the course of the auction.</p> <p>B. <b>Certification.</b> The Contractor must ensure auctioneer certification is valid and in good standing.</p> <p>C. <b>Reporting.</b> The Contractor must provide a detailed summary statement "Final Auction Results" at the end of auction sale.</p>
<b>Acceptable Standard</b>	<p>A. The Contractor must be present and available to answer questions and resolve problems within two hours of the notification of the issue.</p> <p>B. The Contractor must maintain auctioneer certification through the Michigan Auctioneers Association and must provide proof of the certification upon request.</p> <p>C. The Contractor must submit the Final Auction Report within five business days of auction.</p>
<b>Credit Due for Failing to Meet the Service Level Agreements</b>	<p>A. If the Contactor's website is down for more than two hours while the auction is live the bidder will be required to pay the State \$100 for every additional hour the site is not functioning as intended. If the website is down for more than a total of five hours during the auction, the State may either extend or reschedule the auction at no additional cost to the State.</p> <p>B. The Contractor may be assessed a penalty of \$25 for every day the Contractor is not certified through the Michigan Auctioneers Association. The State reserves the right to cancel the Contract</p>

	<p>with the Contractor if they are not in compliance with this certification.</p> <p>C. The Contractor may be assessed a penalty of \$25 for every day after five business days of auction the State has not received the Final Auction Report.</p>
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# SCHEDULE B - PRICING

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## Auctioneering Services

1. Pricing includes all costs, including but not limited to, any one-time or set-up charges, fees, and potential costs that Contractor may charge the State (e.g., shipping and handling, per piece pricing, and palletizing).
2. The State does not guarantee a minimum or maximum volume of work.

### A. Online Auction Services Pricing

Agency/ Auction Type	*Buyer's Premium Percentage
Treasury Unclaimed Property	15%

### B. Live Auction Services Pricing

Agency/ Auction Type	Estimated Annual Sales	*Buyer's Premium Percentage  (cash or check purchase)	*Buyer's Premium Percentage  (credit card purchases include additional 3% fee)
Treasury Unclaimed Property	\$300,000.00	10%	13%
<b>TOTAL YEARLY PRICE</b>		<b>\$30,000.00</b>	
<b>TOTAL THREE-YEAR PRICE</b>		<b>\$90,000.00</b>	

# **SCHEDULE C – INSURANCE REQUIREMENTS**

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## **Auctioneering Services**

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

- e. The State may require additional proofs of insurance or solvency, including but not limited to policy declarations, policy endorsements, policy schedules, self-insured certification or authorization, and audited financial statements.
  - f. In the event any required coverage is cancelled or not renewed, Contractor must provide written notice to DTMB Enterprise Risk Management no later than 5 business days following such cancellation or nonrenewal.
- 6. Subcontractors.** Contractor is responsible for ensuring its subcontractors, if any, carry and maintain insurance coverage as applicable to the subcontracted service(s).
- 7. Limits of Coverage & Specific Endorsements.**

Required Limits	Additional Requirements
<b>Commercial General Liability Insurance</b>	
<b>Minimum Limits:</b> <b>\$1,000,000 Each Occurrence</b> <b>\$1,000,000 Personal &amp; Advertising Injury</b> <b>\$2,000,000 Products/Completed Operations</b> <b>\$2,000,000 General Aggregate</b>  <b>Deductible Maximum:</b> <b>\$50,000 Each Occurrence</b>	Contractor must have their policy endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds using endorsement CG 20 10 11 85, or both CG 20 10 12 19 and CG 20 37 12 19.
<b>Umbrella or Excess Liability Insurance</b>	
<b>Minimum Limits:</b> <b>\$5,000,000 General Aggregate</b>	Contractor must have their policy follow form
<b>Automobile Liability Insurance</b>	
<b>Minimum Limits:</b> <b>\$1,000,000 Per Accident</b>	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

Required Limits	Additional Requirements
	insureds; and (2) include Hired and Non-Owned Automobile coverage.
<b>Workers' Compensation Insurance</b>	
<b>Minimum Limits:</b> <b>Coverage according to applicable laws governing work activities.</b>	Waiver of subrogation, except where waiver is prohibited by law.
<b>Employers Liability Insurance</b>	
<b>Minimum Limits:</b> <b>\$500,000 Each Accident</b> <b>\$500,000 Each Employee by Disease</b> <b>\$500,000 Aggregate Disease</b>	
<b>Privacy and Security Liability (Cyber Liability) Insurance</b>	
<b>Minimum Limits:</b> <b>\$1,000,000 Each Occurrence</b> <b>\$1,000,000 Annual Aggregate</b>	Contractor must have their policy cover information security and privacy liability, privacy notification costs, regulatory defense and penalties, and website media content liability.
<b>Crime (Fidelity) Insurance</b>	
<b>Minimum Limits:</b> <b>\$1,000,000 Employee Theft Per Loss</b>	Contractor must have their policy: (1) cover forgery and alteration, theft of money and securities, robbery and safe burglary, computer fraud, funds transfer fraud, money order and counterfeit currency, and (2) endorsed to add "the State of Michigan, its departments, division agencies, offices, commissions, officers, employees, and agents" as Loss Payees.
<b>Professional Liability (Errors and Omissions) Insurance</b>	
<b>Minimum Limits:</b> <b>\$3,000,000 Each Occurrence</b> <b>\$3,000,000 Annual Aggregate</b>	

Required Limits	Additional Requirements
<b>Deductible Maximum:</b> <b>\$50,000 Per Loss</b>	
<b>Property Insurance</b>	
<b>Minimum Limits:</b> <b>\$2,000,000 Each Occurrence</b>	Contractor must have their policy: (1) endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, and employees, and agents” as additional insureds.

- 8. Notice of Non-Compliance.** Contractor consents to receiving electronic communications from a third-party service provider, Origami Risk, for the exclusive purpose of notifying Contractor of non-compliance with the requirements set forth in this Schedule C.
- 9. Non-Waiver.** This Schedule C is not intended to and is not to be construed in any manner as waiving, restricting or limiting the liability of either party for any obligations under this Contract, including any provisions hereof requiring Contractor to indemnify, defend and hold harmless the State.

# SCHEDULE E - DATA SECURITY REQUIREMENTS FOR HYBRID PURCHASES

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

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

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

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

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

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

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

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

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

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

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

“SSAE” means Statement on Standards for Attestation Engagements.

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

2. **Security Officer.** Contractor will appoint a Contractor employee to respond to the State’s inquiries regarding the security of the Hosted Services who has sufficient knowledge of the security of the Hosted Services and the authority to act on behalf of Contractor in matters pertaining thereto (“**Contractor Security Officer**”).
3. **Contractor Responsibilities.** Contractor is responsible for establishing and maintaining a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to:
  - (a) ensure the security and confidentiality of the State Data;
  - (b) protect against any anticipated threats or hazards to the security or integrity of the State Data;
  - (c) protect against unauthorized disclosure, access to, or use of the State Data;
  - (d) ensure the proper disposal of any State Data in Contractor’s or its subcontractor’s possession; and
  - (e) ensure that all Contractor Representatives comply with the foregoing.

The State has established Information Technology (IT) PSPs to protect IT resources under the authority outlined in the overarching State 1305.00 Enterprise IT Policy. In no case will the safeguards of Contractor’s data privacy and information security program be less stringent than the safeguards used by the State, and Contractor must at all times comply with all applicable public and non-public State IT policies and standards, of which the publicly available ones are at DTMB - IT Policies, Standards & Procedures (michigan.gov).

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

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

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

- 5.1** If Hosted Services are provided by a Hosting Provider, ensure each Hosting Provider maintains FedRAMP authorization for all Hosted Services environments throughout the Term, and in the event a Hosting Provider is unable to maintain FedRAMP authorization, the State, at its sole discretion, may either a) require the Contractor to move the Software and State Data to an alternative Hosting Provider selected and approved by the State at Contractor's sole cost and expense without any increase in Fees, or b) immediately terminate this Contract for cause pursuant to **Section 25** of the Contract;
- 5.2** for Hosted Services provided by the Contractor, maintain either a FedRAMP authorization or an annual SSAE 18 SOC 2 Type II audit based on State required NIST Special Publication 800-53 MOD Controls using identified controls and minimum values as established in applicable State PSPs.
- 5.3** ensure that the Software and State Data is securely stored, hosted, supported, administered, accessed, developed, and backed up in the continental United States, and the data center(s) in which the data resides minimally meet Uptime Institute Tier 3 standards ([www.uptimeinstitute.com](http://www.uptimeinstitute.com)), or its equivalent;
- 5.4** maintain and enforce an information security program including safety and physical and technical security policies and procedures with respect to its Processing of the State Data that complies with the requirements of the State's data security policies as set forth in this Contract, and must, at a minimum, remain compliant with FISMA and NIST Special Publication 800-53 MOD Controls using identified controls and minimum values as established in applicable State PSPs;
- 5.5** provide technical and organizational safeguards against accidental, unlawful or unauthorized access to or use, destruction, loss, alteration, disclosure, encryption, transfer, commingling or processing of such information that ensure a level of security appropriate to the risks presented by the processing of State Data and the nature of such State Data, consistent with best industry practice and applicable standards (including, but not limited to, compliance with FISMA, NIST, CMS, IRS, FBI, SSA, HIPAA, FERPA and PCI requirements as applicable);
- 5.6** take all reasonable measures to:
  - (a)** secure and defend all locations, equipment, systems and other materials and facilities employed in connection with the Contract Activities against "malicious actors" and others who may seek, without authorization, to

destroy, disrupt, damage, encrypt, modify, copy, access or otherwise use Hosted Services or the information found therein; and

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

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

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

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

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

**7. Unauthorized Access.** Contractor may not access, and must not permit any access to, State systems, in whole or in part, whether through the Hosted Services or otherwise, without the State's express prior written authorization. Such authorization may be revoked by the State in writing at any time in its sole discretion. Any access to State systems must be solely in accordance with the Contract and this Schedule, and in no case exceed the scope of the State's authorization pursuant to this Section. All

State-authorized connectivity or attempted connectivity to State systems must be only through the State's security gateways and firewalls and in compliance with the State's security policies set forth in the Contract as the same may be supplemented or amended by the State and provided to Contractor from time to time.

## **8. Security Audits.**

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

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

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

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

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

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

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

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

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

**9.2** Static Application Security Testing (SAST) - Scanning source code for vulnerabilities, analysis, remediation, and validation.

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

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

(a) For Software that includes third party and open source software, all included third party and open source software must be documented and the source supplier must be monitored by the Contractor for notification of identified

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

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

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

## **10. Infrastructure Scanning.**

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

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