



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

CONTRACT CHANGE NOTICE

Change Notice Number **1**
 to
 Contract Number **071B7700200**

CONTRACTOR	DELOITTE & TOUCHE LLP	STATE	Program Manager	Reid Sisson	DTMB
	200 Renaissance Center , Suite 3900			517-241-1638	
	Detroit, MI 48243-1704		Contract Administrator	SissonR@Michigan.gov	
	Dave Dawson			Jordan Sherlock	DTMB
	206-954-6332			517-243-5556	
	davedawson@deloitte.com			sherlockj@michigan.gov	
	CV0002117				

CONTRACT SUMMARY				
SOFTWARE ASSESS MANAGEMENT - IMPLEMENTATION SERVICE				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE	
September 14, 2017	September 13, 2022	5 - 1 Year	September 13, 2022	
PAYMENT TERMS		DELIVERY TIMEFRAME		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-Card <input type="checkbox"/> PRC <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
MINIMUM DELIVERY REQUIREMENTS				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input type="checkbox"/>		September 13, 2022
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$391,001.00	\$215,930.00	\$606,931.00		
DESCRIPTION				
Effective 12/16/2019 the following amendment is incorporated into this contract per attached statement of work. This contract is also hereby increased by \$215,930.00 for DTMB use.				
All other terms, conditions, specifications, and pricing remain the same. Per contractor and agency agreement, and DTMB Procurement approval.				



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

Project Title: SAMO Flexnet Upgrade & IBM Onboarding	Period of Coverage:
Requesting Department: DTMB CTO	Date: 6/26/2019
Agency Business Manager: Reid Sisson, Enterprise Services	Phone: 517.241.1638
Agency Technical Manager: Phil Adolph, Design & Delivery	Phone: 517.636.4609
DTMB Project Manager: Tracey Highlen, EPMO	Phone: 517.636.6840

Brief Description of Services to be provided:

BACKGROUND:

The State of Michigan (SOM), Department of Technology, Management and Budget (“DTMB”) is executing this Statement of Work (SOW) under the Software Implementation Project Contract (#071B7700200) to upgrade and implement new functionality within its installed FlexNet Manager System (FNMS) for Software Asset Management and Optimization. DTMB is in the process of deployment FNMS agents on all servers within State Datacenters and needs to upgrade the application to the latest generally released version of FNMS. DTMB additionally requires assistance with onboarding of select IBM software titles. For the purposes of this SOW, Contractor is Deloitte & Touche LLP.

DTMB is currently migrating servers to the new Virtual Datacenter, which runs servers with multiple operating systems on virtualization fabrics, including VMWare vCenter and Oracle Virtual Machines. DTMB manages servers, consisting of the following by operating system:

- Windows Server OS.
- Linux.
- HP-UX.
- Sun Solaris.
- IBM AIX.

DTMB has implemented BMC BladeLogic Datacenter Automation and associated modules to manage these devices. Additionally, Microsoft SCCM is implemented to manage workstations and a subset of servers that provide workstation management services. DTMB is currently running FNMS 2017_R3 on Windows Server 2012-2016, with SQL Server 2016 and 2017.

SCOPE OF WORK:

Contractor will provide the following services:

- Solution Requirements and Design (T1):
 - Validation and Verification of current environment, including current Solution Architecture, Technical Design, and Software Configuration
 - Review of solution, technical, and architectural requirements for latest FNMS version
- Agent-Beacon Deployment and Configuration (T2), including review to validate the State has completed the below activities:
 - Second Beacon placement design to handle agent communication within the Datacenter DMZ.

- Architectural engineering design documentation update and finalization
- Agent package final testing
- VCenter Integration (T3), including:
 - Beacon vCenter integration page configuration, including recommended beacon subnet management for use on up to three vCenter connections
 - Validation of additional data collected on test agents with the added vCenter integration data
 - VCenter integration performance evaluation and optimization tuning
- Software Onboarding of IBM products, including (T4):
 - Appendix A contains the list of IBM products considered in scope for this SOW
- Training, Documentation, Knowledge Transfer (Meeting between Technical Team and Contractors) (T5)

TASKS:

Contractor will provide the services defined within this SOW in accordance with a State-developed project schedule, under the direction and oversight of the State's project manager, the State SAMO Business Program Manager, and the State SAMO Technical Manager.

T1 Solution Requirements and Design

Contractor will work with the State's SAMO Technical Team to review and verify the state of the current system environment, including changes made since the end of Contractor's previous engagement ending 6/20/2018. Contractor will then conduct a review with the SAMO Technical Team of the Flexera official documentation of the latest generally available version of FNMS (Note: as of 6.17.2019, this is expected to be FNMS 2019_R2 or later), during which time any new solution, technical, or architectural requirements needed for the upgrade will be identified. Contractor will provide a written recommendation of these requirements, subject to DTMB review and acceptance. For any required updates of the Enterprise Agreement Solution Assessment ("EASA"), formal approval of the Solution Assessment will be required for acceptance. The State will be responsible for any updates to the EASA and/or the technical environment as a result of the Contractor's assessment.

T2 Agent-Beacon Configuration and Deployment Support

Contractor will provide support to the State's technical team with establishment of a secondary beacon for agent reporting on servers in the Datacenter DMZ. Contractor will review DTMB's ongoing efforts to implement the FNMS agent on servers and provide both onsite and remote technical support for agent-related issues. The support efforts are defined as troubleshooting and validation activities only. Contractor will review configurations and advise the State on performing testing of the agent deployment to confirm compatibility with IBM sub capacity requirements and FNMS technical requirements.

T3 VCenter Integration

Contractor will perform FNMS integration to the State's VCenter instances in partnership with the State's technical team. Based on the State's current Datacenter architecture, Contractor will integrate FNMS with up to four VCenter connections. The State will work with the Contractor to identify, configure and test these connections in line with State standards for connecting with these data sources.

T4 Software Onboarding of IBM Discoverable Software Products

Based on successful implementation of the FNMS server agent and the latest version of FNMS, Contractor will assist DTMB in the onboarding of IBM software products, discoverable by Flexera with Out of the box (OOTB) licensing metrics, including all products licensed by the PVU license metric. Onboarding activities include:

- Contractor will verify that all such software deployments are being reported accurately within the solution, and that the system is meeting IBM contractual requirements, including sub-capacity reporting.
- Contractor will review and analyze procurement records and reports, electronically provided by the State from other State discovery tools as part of the baseline and verification of information within FNMS
- Document all the steps necessary to onboard the IBM products listed in Appendix A.
- Refer to Appendix A for set of products included in scope of the SOW

T5 Training and Documentation

Contractor will transfer knowledge of all activities performed during this engagement to State staff, including both technical and business program staff. At minimum, this will include;

- Weekly meeting with State technical team to review activities and discuss updates made to FlexNet - FNMS
- Documentation of solution requirements and design for the identified version of FNMS to be deployed in Section T1 above
- Documentation of activities and steps applied to successfully onboard the IBM PVU-licensed products addressed in Section T4 above.

Contractor will document all work they make in the course of performing this engagement.

DTMB reserves the right to have the Contractor perform joint on-site reviews of the documentation, including demonstration of the application's new version, participatory overview of all application upgrade work performed, and all software onboarding work performed. These onsite reviews shall not exceed four business days in duration.

DELIVERABLES

Deliverables will not be considered complete until the Agency Project Manager has formally accepted them.

Deliverables for this project include the following:

- Validation of agent function across platforms (T2)
- Validation of configuration of Secondary Beacon (production and non-production) (T2)
- FNMS Tool integration to VCenter (production and non-production) (T3)
- Onboarding of IBM products as stated in scope of services (production and non-production) (T4) – Refer to Appendix A for products in scope
- Documentation, as outlined in section (T5)

ACCEPTANCE CRITERIA

Acceptance of the SAMO Solution will be conducted in the manner specified in Section 9 of the Contract Terms and Conditions.

The State will grant final acceptance on completion of knowledge transfer after completion of all milestones detailed in Exhibit A below, upon which the holdback amounts in Exhibit A will be released to Contractor.

Contractor Staff

Contractor will provide sufficient qualified staffing to satisfy the deliverables of this Statement of Work.

Contractor must provide a list of all subcontractors, including firm name, address, contact person, and a complete description of the work to be contracted. Include descriptive information concerning subcontractor's organization and abilities.

Single Point of Contact:

The Contractor will identify a Single Point of Contact (PM-SPOC). The duties of the SPOC shall include, but not be limited to:

- Assisting the State Project Manager
- Scheduling Contractor resources and activities
- Supporting the management of the Contract
- Facilitating dispute resolution
- Advising the State of performance under the terms and conditions of the Contract

The State reserves the right to require a change in the current SPOC if the assigned SPOC is not, in the opinion of the State, adequately serving the needs of the State.

Key Personnel:

Contractor will provide the Key Personnel as specified in this section to work on and complete the project. All Key Personnel may be subject to the State's interview and approval process. Any key staff substitution must have the prior approval of the State.

The State has identified the following roles as Key Personnel for this engagement :

- Software Specialist, who will be responsible for the FNMS upgrade, beacon deployment, vCenter Integration, and, agent validation.
- Software Asset Management Specialist, who will undertake and be responsible for the onboarding of IBM PVU-licensed software.

Contractor must submit a letter of commitment for Key Personnel, signed by the identified resource, stating their commitment to work for the contractor/subcontractor on this project contingent on execution of the Contract amendment. If the identified personnel are currently assigned to a State project the contractor must provide a letter signed by the State Project Manager releasing the individual from the project upon execution of the contract.

Unauthorized Removal of Key Personnel

Changes to staffing must be planned and agreed by the State as it is acknowledged the unplanned removal of key personnel will interfere in the timely and proper execution of the Contract resulting in damage to the State. As it would be impracticable and extremely difficult to remedy the actual damage sustained by the State as a result of any Unauthorized Removal, the State will assess liquidated damages in the amount of \$25,000 per Unauthorized Removal or as agreed.

Failure of the Contractor to assign acceptable replacements to fill identified gaps in staffing as agreed will result in liquidated damages in excess of \$25,000 in the amount of \$833.00 per vacancy per day. In no event will the damage exceed \$50,000 per vacancy.

On Site Work Requirements

1. Location of Work

Onsite work is to be performed, completed, and managed within the Greater Lansing, MI area, including at State Operations Center office locations in 7285 Parsons Drive, Dimondale, MI 48821. Contractor's offsite work may not exceed 50% of total hours involved in the project.

2. Hours of Operation:

- a. Normal State working hours are 8:00 a.m. to 5:00 p.m. EST, Monday through Friday, with work performed as necessary after those hours to meet project deadlines; No overtime will be authorized or paid.
- b. The State is not obligated to provide State management of assigned work outside of normal State working hours. The State reserves the right to modify the work hours in the best interest of the project.

c. Contractor shall observe the same standard holidays as State employees. The State does not compensate for holiday pay.

3. Additional Security and Background Check Requirements:

Contractor's personnel must submit to Michigan State Police background checks, CJIS and drug tests for all staff identified for assignment to this project. In addition, proposed Contractor personnel will be required to complete and submit an RI-8 Fingerprint Card for the National Crime Information Center (NCIC) Finger Prints, if required by the project.

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

STATE STAFF, ROLES, AND RESPONSIBILITIES

The State will provide the following resources for the Contractor's use on this project:

- Work space.
- Internet access.
- Secure VPN access.
- Printer and copier access.

Contractor may request other resources, which the State will consider, based on justification.

The State will provide physical server maintenance for internally hosted SAMO Solution. The State will perform all internal functions such as maintenance, patches identification, patch publication and upgrades to the operating systems and problem management of the physical hardware infrastructure (for example but not limited to, servers, SAN, routers, networks, disks).

The State is responsible for all customizations and configuration changes, authoritative data sources and applications integrated with the SAMO Solution i.e. scan configuration for SCCM, the Patterns enabled for BMC Discovery, and vCenter API.

The State's EASA document will be complete, approved, and in a state (and that all dependent activities have been completed) to permit immediate execution of engagement scope.

The State will be responsible for any delays to agent deployment and implementation activities from the initial timeline. The Project timeline will be agreed to and signed off on by the end of week one of the engagement.

The State will be responsible for ensuring that a FNMS pilot agent roll out will be completed by the start of the engagement.

The State will have all VCenter systems identified for integration prior to the commencement of engagement and read only windows accounts will be configured for integration authentication.

The State will provide all accounts that have Office 365 subscriptions within week one of the engagement and will confirm Office365 environment pre-requisites are in place by week three of the engagement (firewalls, security changes as needed, etc.).

The State will provide all IBM entitlement documentation and associated information within two weeks of initial request.

The State engagement team will consist of Subject Matter Experts (SME's), project support, a DTMB Technical Manager, DTMB Business Manager, and a State project manager:

State Project Manager

DTMB will provide a Project Manager who will coordinate with the State Technical manager and Contractor in determining the system configuration and technical requirements. The State's Project Manager will provide the following services:

The State's Project Manager will provide the following services:

- Provide access to State facilities, as needed.

- Coordinate the State resources necessary for the project.
- Facilitate coordination between various external contractors.
- Facilitate communication between different State divisions.
- Provide acceptance and sign-off of deliverables/milestones.
- Review and sign-off of invoices.
- Resolve project issues.
- Escalate outstanding/high priority issues.
- Utilize change control procedures.
- Conduct regular and ongoing review of the project to confirm that it meets original objectives and requirements.
- Document and archive all important project decisions.
- Arrange, schedule and facilitate State staff attendance at all project meetings.

PROJECT MANAGEMENT

The Contractor will carry out this project under the direction and control of DTMB in accordance with the State Unified Information Technology Environment (SUITE) methodology which includes standards for project management, systems engineering, and associated forms and templates which is available at <http://www.michigan.gov/suite>. DTMB will assign a project manager who will maintain the project plan and schedule with the Contractor's assistance and input, and provide project updates. DTMB will give a minimum of two weeks' advance notice to the Contractor of any changes to the project schedule that impacts services the Contractor has agreed to perform under this SOW, cost established in Exhibit A – Pricing.

Terms and will be in effect upon execution of Change Notice per section 2.2 Change Control Process of the attached Contract Terms and Conditions. For all other changes to the project schedule, the State Project Manager must obtain signature from the Contractor acknowledging agreement with the schedule change and send the updated schedule and Contractor's signature to State's Contract Administrator to be added to the contract folder prior to implementing the change. Contractor shall complete all assigned tasks by their established deadlines.

Orientation Meeting

Within five business days from execution of this SOW, the Contractor will be required to attend an orientation meeting to discuss the content and procedures of the SOW. The meeting will be held in Lansing, Michigan, at a date and time mutually acceptable to the State and the Contractor. The State shall bear no cost for the time and travel of the Contractor for attendance at the meeting.

PAYMENT SCHEDULE:

Services will be paid at the sign-off of defined project milestones. For purposes of the initial project to install and implement the SAMO Solution, these milestones and payments are defined in Exhibit A –Project Work and Deliverables Pricing. Future Service Engagements will be paid, according to a defined schedule in the individual engagement statement of work. The State reserves the right to hold back up to a ten percent (10%) portion of payments, which will become payable to the Contractor upon final acceptance.

Exhibit A: Pricing	Milestone Amount (\$)	10% Holdback (\$)	Net Payment Amount (\$), less Holdback
T1 Solution Requirements and Design	\$12,540	\$1,254	\$11,286
T2 Agent-Beacon Configuration and Deployment Support	\$71,750	\$7,175	\$64,575
T3 VCenter Integration	\$44,400	\$4,440	\$39,960
T4 Software Onboarding of IBM Discoverable Software Products	\$74,700	\$7,470	\$67,230
T5 Training and Documentation	\$12,540	\$1,254	\$11,286
Totals:	\$215,930	\$21,593	\$194,337

EXPENSES:

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

ASSUMPTIONS:

- Consultant is not responsible for the quality of software discovery data imported into the SAMO Solution.
- Consultant is not responsible for any non-configurable defects within the Flexera Software FlexNet manager application or other Third-party technologies.
- Consultant support effort will be limited to the duration and scope of the engagement and initial timelines. Should effort be required to be extended beyond this timeline and scope, a change order will be required to account for additional time needed.
- The services above will be performed in accordance with the *Statement on Standards for Consulting Services* issued by the American Institute of Certified Public Accountants (the "AICPA"). However, the performance of the services will not constitute an engagement to provide audit, compilation, review, or attest services as described in the pronouncements on professional standards issued by the AICPA or the U.S. Public Company Accounting Oversight Board, or any other regulatory body and, therefore, Deloitte & Touche LLP will not express an opinion or any other form of assurance with respect to any matters (including, without limitation, compliance with U.S. GAAP, IFRS and SEC rules and regulations).
- As an Option to the SOW, the Contractor will provide committed pricing of \$32,800 for Flexera Application Upgrade services upon request from the State. These services are described below:
 - Contractor will work with the SAMO Technical Team to install, configure, and document the latest version of FNMS as identified above, according to a mutually agreed upon schedule, with the intent that the upgrades application will operate in both Test and Production environments. The contractor will perform a functional check of the Office365 module upon completion of upgrade activities to validate configuration is correct and module is functioning per requirements.

APPENDIX A

Part Number	Description
E0225LL	IBM Domino Utility Server Processor Value Unit (PVU) Annual SW Subscription & Support Renewal

E0256LL	IBM MQ Processor Value Unit (PVU) Annual SW Subscription & Support Renewal
E025QLL	IBM WebSphere Application Server Processor Value Unit (PVU) Annual SW Subscription & Support Renewal
E025SLL	IBM WebSphere Application Server Network Deployment Processor Value Unit (PVU) Annual SW Subscription & Support Renewal
E02AULL	IBM Integration Bus Processor Value Unit (PVU) Annual SW Subscription & Support Renewal
E02RZLL	IBM Transformation Extender Design Studio Authorized User Annual SW Subscription & Support Renewal
E03VJLL	IBM Connections Authorized User Annual SW Subscription & Support Renewal
E0501LL	IBM FileNet Content Manager Authorized User Value Unit Annual SW Subscription & Support Renewal
E052QLL	IBM Enterprise Records Add-On Authorized User Value Unit Annual SW Subscription & Support Renewal
E053KLL	IBM FileNet Image Services Authorized User Value Unit Annual SW Subscription & Support Renewal
E0545LL	IBM FileNet Image Manager Active Edition Add-On Authorized User Value Unit Annual SW Subscription & Support Renewal
E054ALL	IBM FileNet Image Services Toolkit Client Device Annual SW Subscription & Support Renewal
E05NZLL	IBM Content Collector for File Systems Authorized User Value Unit Annual SW Subscription & Support Renewal
E063QLL	IBM Cognos Impromptu User Authorized User Annual SW Subscription & Support Renewal
E06WHLL	IBM Security Identity and Access Assurance User Value Unit Annual SW Subscription & Support Renewal
E07UMLL	IBM Domino Enterprise Client Access License Authorized User Annual SW Subscription & Support Renewal
E090TLL	IBM WebSphere MQ Advanced Message Security Processor Value Unit (PVU) Annual SW Subscription & Support Renewal
E097JLL	IBM Content Collector for SAP Applications Authorized User Value Unit Annual SW Subscription & Support Renewal
E09NNLL	IBM SPSS Statistics Base Authorized User Annual SW Subscription & Support Renewal
E09PKLL	IBM SPSS Regression Authorized User Annual SW Subscription & Support Renewal
E09PPLL	IBM SPSS Complex Samples Authorized User Annual SW Subscription & Support Renewal
E09PVLL	IBM SPSS Advanced Statistics Authorized User Annual SW Subscription & Support Renewal

E09Q7LL	IBM SPSS Forecasting Authorized User Annual SW Subscription & Support Renewal
E0ATGLL	IBM Production Imaging Edition Add-On for FileNet Content Manager Authorized User Value Unit Annual SW Subscription & Support Renewal
E0AUULL	IBM Maximo Asset Management Authorized User Annual SW Subscription & Support Renewal
E0CRDLL	IBM Security AppScan Enterprise Server Install Annual SW Subscription & Support Renewal
E0CRJLL	IBM Security AppScan Enterprise Dynamic Analysis Scanner Install Annual SW Subscription & Support Renewal
E0DKILL	IBM InfoSphere Information Server Enterprise Edition Processor Value Unit (PVU) Annual SW Subscription & Support Renewal
E0DLDLL	IBM InfoSphere Information Server Enterprise Edition for Non-Production Environments Processor Value Unit (PVU) Annual SW Subscription & Support Renewal
E0EHILL	IBM Datacap Enterprise Edition Add-On Authorized User Value Unit Annual SW Subscription & Support Renewal 12 Months
E0JEZLL	IBM Daeja ViewONE Virtual Module for Microsoft Office Authorized User Value Unit Annual SW Subscription & Support Renewal
E0K2DLL	IBM Cognos Analytics Explorer Authorized User Annual SW Subscription & Support Renewal
E0K30LL	IBM Cognos Analytics Administrator per Authorized User Annual SW Subscription & Support Renewal
E0K32LL	IBM Cognos Analytics User per Authorized User Annual SW Subscription & Support Renewal
E0KHALL	Integration Module for IBM DataPower Gateway Virtual Edition Processor Value Unit Annual Software Subscription & Support Renewal
E0KHLLL	Application Optimization Module for IBM DataPower Gateway Virtual Edition Processor Value Unit Annual Software Subscription & Support Renewal
E0KHQLL	IBM DataPower Gateway Virtual Edition for Non Production Environment Processor Value Unit Annual Software Subscription & Support Renewal
E0KHULL	IBM DataPower Gateway Virtual Edition Processor Value Unit Annual Software Subscription & Support Renewal
E0M57LL	IBM Security Directory Suite Standard Edition Processor Value Unit (PVU) Annual SW Subscription & Support Renewal
E0M5BLL	IBM Security Directory Suite Enterprise Edition User Value Unit Annual SW Subscription & Support Renewal
E0M5HLL	IBM Security Identity Governance and Intelligence Enterprise Edition User Value Unit Annual SW Subscription & Support Renewal 12 Months

E0M8FLL	IBM WebSphere Application Server Family Edition Processor Value Unit (PVU) Annual SW Subscription & Support Renewal 12 Months
E0MCWLL	IBM Transformation Extender Processor Value Unit (PVU) Annual SW Subscription & Support Renewal
E0MD4LL	IBM Transformation Extender Pack for Healthcare Processor Value Unit (PVU) Annual SW Subscription & Support Renewal
E0MD7LL	IBM Transformation Extender Pack for Healthcare for Non Production Processor Value Unit (PVU) Annual SW Subscription & Support Renewal
E0MDALL	IBM Transformation Extender Pack for Supply Chain EDI Processor Value Unit (PVU) Annual SW Subscription & Support Renewal
E0MIHLL	IBM API Connect Enterprise Processor Value Unit (PVU) Annual SW Subscription & Support Renewal 12 Months
E1AHNLL	IBM XL C/C++ for AIX Authorized User Annual SW Subscription & Support Renewal
E1BGELL	IBM Host Access Client Package for Multiplatforms Authorized User Annual SW Maintenance Renewal



STATE OF MICHIGAN ENTERPRISE PROCUREMENT

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

NOTICE OF CONTRACT

NOTICE OF CONTRACT NO. **071B7700200**

between
THE STATE OF MICHIGAN
and

CONTRACTOR	Deloitte & Touche LLP
	200 Renaissance Center, Suite 3900
	Detroit, MI – 48243 -1704
	Dave Dawson
	206 – 954 - 6332
	davedawson@deloitte.com
	Tax ID (1517)

STATE	Program Manager	Reid Sisson	DTMB
		517-241-1638	
		SissonR@michigan.gov	
	Contract Administrator	Malathi Natarajan	DTMB
		517-284-7030	
		NatarajanM@michigan.gov	

CONTRACT SUMMARY			
DESCRIPTION: SAMO – Statewide – Software Implementation Service			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
September 14, 2017	September 13, 2022	5, 1 year	September 13, 2022
PAYMENT TERMS		DELIVERY TIMEFRAME	
Net 45		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
N/A			
MISCELLANEOUS INFORMATION			
This Contract is awarded from Request for Proposal # 007117B0010230 published on Buy4Michigan.			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION			\$391,001.00

FOR THE CONTRACTOR:

Company Name

Authorized Agent Signature

Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature

Malathi Natarajan, Category Specialist - IT

Central Procurement – Enterprise Sourcing

Date

Software Implementation Contract Terms

This Software Implementation Contract (this “**Contract**”) is agreed to between the State of Michigan (the “**State**”) and Deloitte & Touche LLP (“**Contractor**”), a Delaware Limited Liability Partnership. This Contract is effective on September 14, 2017, (“**Effective Date**”), and unless earlier terminated, will expire on September, 13, 2022 (the “**Term**”).

This Contract may be renewed at the mutual written agreement of the parties hereto. The Contract may be renewed for up to five (5) additional one-year periods.

The parties agree as follows:

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

“**Acceptance**” has the meaning set forth in **Section 7.5**.

“**Acceptance Tests**” means such tests as may be conducted in accordance with **Section 7** and the Statement of Work to determine whether the Deliverables meet the requirements of this Contract and the Documentation.

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

“**Allegedly Infringing Materials**” has the meaning set forth in **Section 18.3(b)(ii)**.

“**API**” means all application programming interfaces and associated API Documentation provided by Contractor, and as updated from time to time, to allow the Software to integrate with various State and Third-Party software and systems.

“**Authorized Users**” means all Persons authorized by the State to access and use the Software under the License Agreement.

“**Background Technology**” means all software, data, know-how, ideas, methodologies, specifications, and other technology in which Contractor owns such Intellectual Property Rights as are necessary for Contractor to grant the rights and licenses set forth in **Section 11.3**, and for the State (including its licensees, successors and assigns) to exercise such rights and licenses, without violating any right of any Third Party or any Law or incurring any payment obligation to any Third Party. Background Technology must: (a) be identified as Background Technology in the Statement of Work; and (b) have been developed or otherwise acquired by Contractor prior to the date of the Statement of Work, or have been developed by Contractor outside of its performance under the Statement of Work.

Background Technology will also include any general consulting tool or methodology created by Contractor, which will not be required to be identified in the Statement of Work.

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

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

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

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

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

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

“Confidential Information” has the meaning set forth in **Section 13.1**.

“Configurations” means State-specific changes made to the Software and Software Adapters by Contractor without Source Code or structural data model changes occurring.

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

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

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

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

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

“Defect” has the meaning set forth in **Section 17.4(b)**.

“Deliverables” means all deliverables set forth in the Statement of Work that cover the following phases of Contractor’s implementation Services: (i) Planning and Design, (ii) Build, (iii) Configure, and (iv) Deploy and Finalize. Deliverables include any Configurations and APIs configured or developed by Contractor.

“Derivative Work” means any modification, addition, upgrade, update, or improvement of the Software and any other work constituting a derivative work under the United States Copyright Act, 17 U.S.C. Section 101, *et seq.*

"Dispute Resolution Procedure" has the meaning set forth in **Section 22.1**.

"Documentation" means all reports, instructions, specifications, documents or materials, in any form or media, which describe and document the following phases of Contractor's implementation services for the Software: (i) Planning and Design, (ii) Build, (iii) Configure, and (iv) Deploy and Finalize.

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

"Effective Date" has the meaning set forth in the preamble.

"Fees" means the fees set forth in the Pricing Schedule.

"Financial Audit Period" has the meaning set forth in **Section 20.1**.

"Force Majeure" has the meaning set forth in **Section 23.1(a)**

"Harmful Code" means any: (a) virus, trojan horse, worm, backdoor or other software or hardware devices the effect of which is to permit unauthorized access to, or to disable, erase, or otherwise harm, any computer, systems or software; or (b) time bomb, drop dead device, or other software or hardware device designed to disable a computer program automatically with the passage of time or under the positive control of any Person, or otherwise prevent, restrict or impede the State's or any Authorized User's use of such software.

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

"Integration Testing" has the meaning set forth in **Section 7.1(c)**.

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

"Key Personnel" means any Contractor Personnel identified as key personnel in the Statement of Work.

"Law" means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree or other requirement or rule of law of any federal, state, local or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction.

"License Agreement" has the meaning set forth in **Section 3**.

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

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

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

"Nonconformity," "Non-Conformities," or "Nonconformities" means any failure or failures of a Deliverable, or the Software as configured by such Deliverable, to materially conform to the requirements of its specifications set forth in the Statement of Work, including any applicable Documentation.

"Operating Environment" means, collectively, the platform, environment and conditions on, in or under which the Software and Deliverables are intended to be installed and operate, as set forth in the Statement of Work, including such structural, functional and other features, conditions and components as hardware, operating software and system architecture and configuration.

"Permitted Subcontractor" has the meaning set forth in **Section 5.5**.

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

"Pricing" means any and all fees, rates and prices payable under this Contract, including pursuant to any Schedule.

"Pricing Schedule" means the schedule attached as **Schedule B**, setting forth all fees, rates and prices payable under this Contract.

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

"Representatives" means a party's employees, officers, directors, consultants, legal advisors, successors and permitted assigns.

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

"Services" means any of the services Contractor is required to or otherwise does provide under this Contract, or the Statement of Work as more fully described in the body of this Contract, and the Statement of Work.

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

"Software" means the Flexera Software Flexnet Manager including any applicable Software Adapters.

"Software Adapters" means Flexera Software factory-supplied adapters that read data from various inventory tools.

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

"Specifications" means, for the Deliverables, the business and technical specifications collectively set forth in the Statement of Work.

"State" means the State of Michigan.

"State Data" has the meaning set forth in **Section 12.1**.

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

"State Resources" has the meaning set forth in **Section 6.1(a)**.

"Statement of Work" means the statement of work attached as **Schedule A** to this Contract.

"Stop Work Order" has the meaning set forth in **Section 16**.

"Term" has the meaning set forth in the preamble.

"Testing Period" has the meaning set forth in **Section 7.1(b)**.

"Third Party" means any Person other than the State or Contractor.

"Transition Period" has the meaning set forth in **Section 15.4**

“Transition Responsibilities” has the meaning set forth in **Section 15.4**.

“Unauthorized Removal” has the meaning set forth in **Section 5.4(b)**.

“Unauthorized Removal Credit” has the meaning set forth in **Section 5.4(c)**.

“User Data” means all data, information and other content of any type and in any format, medium or form, whether audio, visual, digital, screen, GUI or other, that is input, uploaded to, placed into or collected, stored, processed, generated or output by any device, system or network by or on behalf of the State, including any and all works, inventions, data, analyses and other information and materials resulting from any use of the Software by or on behalf of the State under this Contract, except that User Data does not include the Software or data, information or content, including any GUI, audio, visual or digital or other display or output, that is generated automatically upon executing the Software without additional user input.

“Warranty Period” means the ninety (90) calendar-day period commencing on the date the Deliverable is fully configured or integrated into the Software, and is placed into the State’s production environment.

2. Statement of Work. Contractor shall provide Services and Deliverables pursuant to the attached Statement of Work. The term of the Statement of Work shall commence on the parties’ full execution of the Contract and terminate when the parties have fully performed their obligations, unless terminated earlier pursuant to **Section 15**. The terms and conditions of this Contract will apply at all times to the Statement of Work. Contractor agrees that prompt and timely performance of all such obligations in accordance with this Contract and the Statement of Work (including the Implementation Plan and all Milestone Dates) is required.

2.1 Statement of Work Requirement. The Statement of Work will include the following:

- (a) names and contact information for Contractor’s Contract Administrator, Project Manager and Key Personnel;
- (b) names and contact information for the State’s Contract Administrator, Project Manager and Business Owner;
- (c) a detailed description of the Services and Deliverables to be provided under this Contract, including any training and knowledge transfer obligations of Contractor;
- (d) an Implementation Plan, including all Milestones, the corresponding Milestone Dates and the parties’ respective responsibilities under the Implementation Plan;
- (e) the due dates for payment of Fees and any invoicing requirements, including any Milestones on which any such Fees are conditioned, and such other information as the parties deem necessary;

- (f) description of all liquidated damages, if any, associated with this Contract; and
- (g) a detailed description of all State Resources required to complete the Implementation Plan.

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

(a) As soon as reasonably practicable, and in any case within twenty (20) Business Days following receipt of a Change Request, Contractor will provide the State with a written proposal for implementing the requested Change (“**Change Proposal**”), setting forth:

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

(b) Within thirty (30) Business Days, unless the parties agree to a longer period in writing, following the State’s receipt of a Change Proposal, the State will by written notice to Contractor, approve, reject, or propose modifications to such Change Proposal. If the State proposes modifications, Contractor must modify and re-deliver the Change Proposal reflecting such modifications, or notify the State of any disagreement, in which event the parties will negotiate in good faith to resolve their disagreement. Upon the State’s approval of the Change Proposal or the parties’ agreement on all proposed modifications, as the case may be, the parties will execute a written agreement to the Change Proposal (“**Change Notice**”), which Change Notice will be signed by each party’s Contract Administrator and will constitute an amendment to the Statement of Work to which it relates; and

(c) If the parties fail to enter into a Change Notice within fifteen (15) Business Days following the State’s response to a Change Proposal, either party may initiate a Dispute Resolution Procedure. If the parties fail to enter into a Change Notice even after completion of the Dispute Resolution Procedure, the State may, in its discretion:

- (i) require Contractor to perform the Services under the Statement of Work without the Change;

- (ii) require Contractor to continue to negotiate a Change Notice;
- (iii) initiate a Dispute Resolution Procedure; or
- (iv) notwithstanding any provision to the contrary in the Statement of Work, terminate this Contract under **Section 15.2**.

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

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

(f) Contractor may, on its own initiative and at its own expense, prepare and submit its own Change Request to the State. Within a reasonable time period, the State will respond in writing to such request and either: (i) accept the Change Request; (ii) reject the Change Request; or (iii) propose its own Change Request pursuant to the process described above. If the parties agree on carrying out a change requested by Contractor, a written Change Notice must be executed by both parties prior to Contractor's commencement of any changes.

3. Software License. The Software is licensed under a separate license agreement with Flexera Software LLC (the "**License Agreement**"). Contractor's obligations with respect to installation, acceptance, configuration, and integration of the Software is contingent upon the State's proper licensing of the Software under the License Agreement.

4. Implementation.

4.1 Implementation. Contractor will install, configure, integrate, and make fully operational the Software and Deliverables on or prior to the applicable Milestone Date in accordance with the criteria set forth in the Statement of Work. Contractor will not be responsible for any problems, delays, costs, or other issues to the extent caused by defects inherent in the Software. Notwithstanding the foregoing, if a defect is found in the Software, Contractor will assist the State in working with Flexera Software LLC to remedy the defect under the warranty provisions set forth in the License Agreement.

4.2 Site Preparation. As specified in the Statement of Work, the State or Contractor is responsible for ensuring the relevant Operating Environment is set up and in working order to allow Contractor to install and implement the Software and each Deliverable on or prior to the applicable Milestone Date. Contractor will provide the State with such notice as is specified in the Statement of Work, prior to installation of the Software and each Deliverable, to give the State sufficient time to prepare for Contractor's installation of the Software and Deliverable. If the State is responsible for Site preparation, Contractor will provide such assistance as the State requests to complete such preparation on a timely basis.

5. Performance of Services. Contractor will provide all Services and Deliverables in a timely, professional and workmanlike manner and in accordance with the terms, conditions, and Specifications set forth in this Contract and the Statement of Work.

5.1 State Standards.

(a) The Contractor must, in performing the Services, adhere to all existing standards as described within the comprehensive listing of the State's existing technology standards at <http://www.michigan.gov/dmb/0,4568,7-150-56355-108233--,00.html>.

(b) To the extent that Contractor has access to the State's computer system, Contractor must comply with the State's Acceptable Use Policy, see http://michigan.gov/cybersecurity/0,1607,7-217-34395_34476---,00.html. 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.

(c) Contractor is not authorized to make changes to any State systems without prior written authorization from the State's Project Manager. Any changes Contractor makes to any State systems with the State's approval must be done according to applicable State procedures, including security, access, and configuration standards.

5.2 Contractor Personnel.

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

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

- (i) ensure that such Contractor Personnel have the legal right to work in the United States;
- (ii) upon request, require such Contractor Personnel to execute written agreements that bind such Contractor Personnel to confidentiality provisions that are at least as

protective of the State's information (including all Confidential Information) as those contained in this Contract; and

- (iii) upon request, perform background checks on all Contractor Personnel prior to their assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks on Contractor Personnel. The State may only perform such background checks after Contractor has received permission of the individuals on whom the State wants to perform its own background checks. Any individual who refuses to allow such a background check shall be prohibited from performing services at the State's locations.

(c) Contractor and all Contractor Personnel will comply with all rules, regulations, and policies of the State that are communicated to Contractor in writing, including security procedures concerning systems and data and remote access, building security procedures, including the restriction of access by the State to certain areas of its premises or systems, and general health and safety practices and procedures. If any rules, regulations, and policies are instituted after the parties have executed the Statement of Work, and would materially alter Contractor's ability, timing, costs, or resources necessary to perform its Services, the parties will mutually agree on an adjustment in time, price and resourcing pursuant to the Change Notice process set forth in Section 2.2.

(d) The State reserves the right to request the removal of any Contractor Personnel for performance related reasons. The State's request must be written with reasonable detail outlining the reasons for the removal request. Upon receipt of such written request from the State, Contractor will cure such performance-related issue or promptly remove such personnel from the performance of Services. Replacement personnel for the removed person must be fully qualified for the position. If the State exercises this right, and Contractor cannot immediately replace the removed personnel, the State agrees to negotiate an equitable adjustment in schedule or other terms that may be affected by the State's required removal.

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

- (a) Contractor's Project Manager must:
 - (i) have the requisite authority, and necessary skill, experience, and qualifications, to perform in such capacity;
 - (ii) be responsible for overall management and supervision of Contractor's performance under this Contract; and

- (iii) be the State's primary point of contact for communications with respect to this Contract, including with respect to giving and receiving all day-to-day approvals and consents.

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

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

- (i) the State requests in writing the removal of Contractor's Project Manager;
- (ii) the State consents in writing to any removal requested by Contractor in writing;
- (iii) Contractor's Project Manager leaves the project for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation; or
- (iv) Contractor's Project Manager leaves the project due to a termination of employment, or the promotion or transfer of the Project Manager, provided that such transfer or promotion occurs after twelve (12) months from the effective date of the final Statement of Work, and Contractor identifies a replacement approved by the State in advance and assigns the replacement to shadow the Project Manager for a period of at least thirty (30) calendar days.

(d) Contractor will promptly replace its Project Manager on the occurrence of any event set forth in **Section 5.3(c)**. Such replacement will be subject to the State's prior written approval.

5.4 Contractor's Key Personnel.

(a) The State has the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the State of the proposed assignment, introduce the individual to the State'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.

(b) Contractor will not remove any Key Personnel from their assigned roles on the Statement of Work 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, or the promotion or transfer of

the Key Personnel, provided that such transfer or promotion occurs twelve (12) months from the effective date of the final Statement of Work and Contractor identifies a replacement approved by the State and assigns the replacement to shadow the Key Personnel who has been promoted or transferred for a period of at least thirty (30) calendar days, unless otherwise specified in the Statement of Work. Any Unauthorized Removal may be considered by the State to be a material breach of this Contract, in respect of which the State may elect to terminate this Contract for cause under **Section 15.1**.

(c) It is further acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of this Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under **Section 15.1**, Contractor will issue to the State an amount equal to \$25,000 per Key Personnel (each, an “**Unauthorized Removal Credit**”). Contractor’s aggregate liability for all Unauthorized Removal Credits assessed under the Statement of Work shall not exceed \$100,000 which will be the State’s exclusive monetary remedy for Unauthorized Removals.

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

5.5 Subcontractors. With the exception of Contractor’s Affiliates, Contractor will not, without the prior written approval of the State, which consent may be given or withheld in the State’s sole discretion, engage any Third Party to perform Services. The State’s approval of any such Third Party (each Affiliate or approved Third Party, a “**Permitted Subcontractor**”) does not relieve Contractor of its representations, warranties or obligations under this Contract. Without limiting the foregoing, Contractor will:

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

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

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

6. State Obligations.

6.1 State Resources and Access. The State is responsible for:

- (a) providing the State Materials, including State personnel, and such other resources as may be specified in the Statement of Work (collectively, "**State Resources**"); and
- (b) providing Contractor Personnel with such access to the Site(s) and Operating Environment as is necessary for Contractor to perform its obligations on a timely basis as set forth in the Statement of Work.

6.2 State Project Manager. Throughout the Term of this Contract, the State will maintain a State employee to serve as the State's Project Manager under this Contract. The State's Project Manager will be identified in the Statement of Work. The State's Project Manager or designee will attend all regularly scheduled meetings as set forth in the Implementation Plan and will otherwise be available as set forth in the Statement of Work.

7. **Acceptance Testing; Acceptance.**

7.1 Acceptance Testing.

(a) Unless otherwise specified in the Statement of Work, upon installation of the Deliverables, Acceptance Tests will be conducted as set forth in this **Section 7** to ensure the Software (except for any issues or defects which are not caused by the Deliverables) operates as required under the Statement of Work, and that the Deliverables conform to the requirements set forth in the Statement of Work, including the applicable Specifications and Documentation. Contractor will triage Software defects as set forth in Section 4.1 above.

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

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

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

(c) Upon delivery and installation of any Configuration or API under the Statement of Work, additional Acceptance Tests will be performed on the Software and Deliverables, as a whole, to ensure

full operability, integration, and compatibility among all elements of the Software and the respective Deliverables (“**Integration Testing**”). Integration Testing is subject to all procedural and other terms and conditions set forth in **Section 7.1**, **Section 7.3**, and **Section 7.4**.

(d) The State may suspend Acceptance Tests and the corresponding Testing Period by written notice to Contractor if the State discovers a material Non-Conformity in the tested Deliverable or part or feature of such Deliverable that prevents testing from moving forward. In such event, Contractor will promptly, and in any case within ten (10) Business Days, correct such Non-Conformity (or proceed using a work around that has been authorized by the State in writing), whereupon the Acceptance Tests and Testing Period will resume for the balance of the Testing Period. Notwithstanding the foregoing, any work around accepted by the State must be fully resolved prior to expiration of the Warranty Period, at no cost to the State.

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

(a) If such notice is provided by either party and identifies any Non-Conformities, the parties’ rights, remedies, and obligations will be as set forth in **Section 7.3** and **Section 7.4**.

(b) If such notice is provided by the State, is signed by the State’s Business Owner and Project Manager, and identifies no Non-Conformities, such notice constitutes the State’s Acceptance of such Deliverable.

(c) If such notice is provided by Contractor and identifies no Non-Conformities, the State will have thirty (30) Business Days to use such Deliverable in the Operating Environment and determine, pursuant to the Specifications and Documentation, whether the Deliverable contains no Non-Conformities, on the completion of which the State will, as appropriate:

- (i) notify Contractor in writing of Non-Conformities the State has observed in the Deliverable, and of the State’s non-acceptance thereof, whereupon the parties’ rights, remedies and obligations will be as set forth in **Section 7.3** and **Section 7.4**; or
- (ii) provide Contractor with a written notice of its Acceptance of such Deliverable, which must be signed by the State’s Business Owner and Project Manager.

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

(a) completion of such Acceptance Tests, in the case of Acceptance Tests conducted by Contractor; or

(b) receipt of the State's notice under **Section 7.1(a)** or **Section 7.2(c)(i)**, identifying any Non-Conformities.

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

(a) continue the process set forth in this **Section 7**;

(b) accept the Deliverable as a nonconforming deliverable, in which case the Fees for such Deliverable will be reduced equitably to reflect the value of the Deliverable as received relative to the value of the Deliverable had it conformed; such partial acceptance shall be administered through a Change Notice; or

(c) deem the failure to be a non-curable material breach of this Contract and the Statement of Work and terminate this Contract for cause in accordance with **Section 15.1**.

7.5 Acceptance. Acceptance ("**Acceptance**") of each Deliverable (subject, where applicable, to the State's right to Integration Testing) will occur on the date that is the earliest of the State's delivery of:

(a) the State's delivery of a notice accepting such Deliverable under **Section 7.2(b)**, or **Section 7.2(c)(ii)**;

(b) solely if the State is responsible for performing such Acceptance Tests or Integration Testing, five (5) Business Days after expiration of the Testing Period if the State has not notified Contractor of one or more Non-Conformities prior to such date; or

(c) solely if Contractor is responsible for performing such Acceptance Tests or Integration Tests, the number of days specified in **Section 7.2(c)** after the State receives Contractor's Notice of Completion, if the State fails to respond to such Notice of Completion prior to such date.

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

9. Fees

9.1 Fees. In consideration of, and as payment in full for, Contractor's provision of Services as provided in this Contract and the Statement of Work, the State shall pay to Contractor the fees set forth

on the Pricing Schedule, subject to and in accordance with the terms and conditions of this Contract, including the applicable timetable and other provisions of the Statement of Work and this **Section 9**.

9.2 Firm Pricing/Fee Changes. All Pricing set forth in this Contract is firm and will not be increased, except through a formal Change Notice.

9.3 Administrative Fee and Reporting.

(a) The Contractor must remit an administrative fee of 1% on all payments remitted to Contractor under the Contract including transactions with the State (including its departments, divisions, agencies, offices, and commissions). Contractor must submit an itemized purchasing activity report, which includes at a minimum, the name of the purchasing entity and the total dollar volume in sales.

(b) Itemized purchasing activity reports must be mailed to DTMB-Procurement and the administrative fee payments shall be made by check payable to the State of Michigan and mailed to:

**The Department of Technology, Management and Budget
Cashiering
P.O. Box 30681
Lansing, MI 48909**

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

10. Invoices and Payment.

10.1 Invoices. Contractor will invoice the State for Fees in accordance with the requirements set forth in the Statement of Work, including any requirements that condition the rendering of invoices and the payment of Fees upon the successful completion of Milestones. Contractor must submit each invoice in both hard copy and electronic format, via such delivery means and to such address as are specified by the State in the Statement of Work. Each separate invoice must:

- (a) clearly identify the Contract to which it relates, in such manner as is required by the State;
- (b) list each Fee item separately;
- (c) include sufficient detail as reasonably requested by the State for each line item to enable the State to satisfy its accounting and charge-back requirements;
- (d) for Fees determined on a time and materials basis, report details regarding the number of hours performed during the billing period, the skill or labor category for such Contractor Personnel and the applicable hourly billing rates; and
- (e) include such other information as may be required by the State as set forth in the Statement of Work.

10.2 Payment. Invoices are due and payable by the State, in accordance with the State's standard payment procedures as specified in 1984 Public Act no. 279, MCL 17.51, *et seq.*, within forty-five (45) calendar days after receipt, provided the invoice was properly rendered. The State will only disburse payments under this Contract through Electronic Funds Transfer (EFT). In the event that the State fails to pay contractor any Fees within such forty-five (45) days, Contractor may suspend or terminate the Services. Contractor must register with the State at <http://www.michigan.gov/cpexpress> to receive electronic fund transfer payments. If Contractor does not register, the State is not liable for failure to provide payment.

10.3 Taxes. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services or Deliverables purchased under this Contract are for the State's exclusive use. Notwithstanding the foregoing, all Fees are inclusive of taxes, and Contractor is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by the State under this Contract.

10.4 Payment Disputes. The State may withhold from payment any and all payments and amounts the State disputes in good faith, pending resolution of such dispute, provided that the State:

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

During the pendency of a dispute resolution, Contractor shall not withhold any Services or fail to perform any obligation hereunder by reason of the State's good faith withholding of any payment or amount in accordance with this **Section 10.4** or any dispute arising therefrom. In the event that the parties do not resolve the dispute, either party may terminate the applicable Statement of Work for convenience upon ten (10) days written notice to the other party.

10.5 Right of Setoff. Without prejudice to any other right or remedy it may have, the State reserves the right to set off at any time any amount owing to it by Contractor under this Contract against any amount payable by the State to Contractor under this Contract.

11. Intellectual Property Rights

11.1 Ownership Rights in API and Documentation. Except for the license granted in paragraph (c) below, the State is and will be the sole and exclusive owner of all right, title, and interest in and to all API and Documentation developed exclusively for the State under this Contract, including all Intellectual Property Rights. In furtherance of the foregoing, and except as set forth in paragraph (c) below:

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

(b) to the extent any API or Documentation do not qualify as, or otherwise fails to be, work made for hire, Contractor hereby:

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

(c) The State hereby grants to Contractor a non-exclusive, worldwide, royalty-free, perpetual, irrevocable license (with right to sublicense and the right of sublicensees to sublicense further) to use, make, execute, reproduce, sell, display, perform, distribute, modify or otherwise prepare derivative works based on, any or all of Documentation, API and other Deliverables, and any derivatives thereof, and all Intellectual Property Rights therein.

11.2 Background Technology, Approved Third-Party Materials, and Open-Source Components.

(a) Contractor is and will remain the sole and exclusive owner of all right, title, and interest in and to the Background Technology or any enhancements or modifications made to such Background Technology, including all Intellectual Property Rights therein, subject to the license granted in **Section 11.3.**

11.3 Background Technology License. Contractor hereby grants to the State such rights and licenses with respect to the Background Technology that will allow the State to use and otherwise exploit perpetually throughout the universe for its business uses the API, Documentation and other Deliverables without incurring any fees or costs to Contractor (other than the Fees set forth under this Contract) or any other Person in respect of the Background Technology. In furtherance of the foregoing, such rights and licenses will:

(a) be non-exclusive, non-transferrable, non-sublicensable, irrevocable, perpetual, fully paid-up and royalty-free;

(b) include the rights for State contractors to use the Background Technology for the State's business uses; and

(c) include the rights to use, reproduce, perform (publicly or otherwise), display (publicly or otherwise), modify, improve, create Derivative Works of, import, make, and have made, the Background Technology, including all such modifications, improvements and Derivative Works thereof, solely as part of, or as necessary to use the API, Documentation and other Deliverables.

12. State Data.

12.1 Ownership. The State's data ("**State Data**"), which will be treated by Contractor as Confidential Information, includes: (a) User Data; and (b) any other of the State's data collected, used, processed, stored, or generated as the result of the Services, including but not limited to (i) personally identifiable information ("**PII**") collected, used, processed, stored, or generated as the result of the Services, including, without limitation, any information that identifies an individual, such as an individual's social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother's maiden name, email address, credit card information, or an individual's name in combination with any other of the elements here listed. State Data is and will remain the sole and exclusive property of the State and all right, title, and interest in the same is reserved by the State. This **Section 12.1** survives termination or expiration of this Contract.

12.2 Contractor Use of State Data. Contractor is provided a limited license to State Data for the sole and exclusive purpose of providing the Services, including a license to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the Services. Contractor must: (a) keep and maintain State Data in confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Contract and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose State Data solely and exclusively for the purpose of providing the Services, such use and disclosure being in accordance with this Contract, any applicable Statement of Work, and applicable law; and (c) not use, sell, rent, transfer, distribute, or otherwise disclose or make available State Data for Contractor's own purposes or for the benefit of anyone other than the State without the State's prior written consent. This **Section 12.2** survives termination or expiration of this Contract.

12.3 Compromise of State Data. In the event of any Contractor act, error or omission, negligence, misconduct, or breach on the part of Contractor that compromises 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 within one (1) business day 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, reimburse the State for any costs in notifying the affected individuals; (d) in the case of PII, offer 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 twelve (12) 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) reimburse the State for all reasonable costs incurred by the State in the investigation and remediation of such

occurrence, including but not limited to all legal fees, audit costs, fines, and other fees imposed by regulatory agencies or contracting partners as a result of the occurrence; (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 third-party 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 Contractor's breach of this section; (h) be responsible for assisting the State in its recreating of lost State Data caused by Contractor's breach in the manner and on the schedule set by the State without charge to the State to the State's last backup; and (i) provide to the State a detailed plan within ten (10) calendar days of the occurrence describing the measures Contractor will undertake to reduce the risk of a future occurrence. Notwithstanding anything to the contrary set forth in this Section or any other provision of this Contract, the aggregate liability of Contractor for damages under this Section shall not exceed the greater of Two Million Dollars (\$2,000,000.00) of the maximum amount of Fees specified in the Statement of Work (the "**Security Breach Indemnity Cap**"). This **Section 12.3** survives termination or expiration of this Contract for so long as Contractor has possession, custody or control of State data.

13. Confidential Information. Each party acknowledges that it may be exposed to or acquire communication or data of the other party that is confidential in nature and is not intended to be disclosed to third parties. This **Section 13** survives termination or expiration of this Contract.

13.1 Meaning of Confidential Information. The term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was or is: (a) in the possession of the State and 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). Notwithstanding the above, in all cases and for all matters, State Data is deemed to be Confidential Information.

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

work that is within the Permitted Subcontractor's responsibilities; and (c) Contractor obligates the Permitted Subcontractor in a written contract to maintain the State's Confidential Information in confidence. Disclosure is also permitted as required by law, regulation or court order, provided that to the extent a receiving party is required to disclose confidential information pursuant to this subsection, the receiving party shall provide the furnishing party with notice of the legal request within one (1) Business Day of receipt, and assist the furnishing party in resisting or limiting the scope of the disclosure as reasonably requested by the furnishing party. At the State's request, any of the Contractor's Representatives may be required to execute a separate agreement to be bound by the provisions of this **Section 13.2.**

13.3 Cooperation to Prevent Disclosure of Confidential Information. Each party must use its reasonable 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 promptly 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 this **Section**. Each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.

13.4 Surrender of Confidential Information upon Termination. Upon termination or expiration of this Contract or a Statement of Work, in whole or in part, each party must, within five (5) calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Contract. If Contractor or the State determine that the return of any non-State Data Confidential Information is not feasible, such party must destroy the non-State Data Confidential Information and certify the same in writing within five (5) calendar days from the date of termination to the other party. Notwithstanding anything herein to the contrary, Contractor shall have the right to retain copies of non-State Data Confidential Information, and any summaries, analyses, notes, or extracts prepared by Contractor which are based on or contain portions of such Confidential Information to the extent necessary to evidence performance of the Services, provided that Contractor retains such copies in accordance with its confidentiality obligations hereunder.

13.5 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.

14. ADA Compliance. The State is required to comply with the Americans with Disabilities Act of 1990 (ADA), and has adopted a formal policy regarding accessibility requirements for websites and software applications. Deliverables must comply, where relevant and applicable, with level AA of the World Wide Web Consortium (W3C) Web Content Accessibility Guidelines (WCAG) 2.0.

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

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

(a) The State may terminate this Contract or a Statement of Work for cause, if Contractor materially breaches this Contract, and such breach:

- (i) is incapable of cure;
- (ii) is a repeated breach; or
- (iii) being capable of cure, remains uncured for thirty (30) calendar days after the Contractor receives written notice thereof.

Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

(b) The State may terminate this Contract for cause, in whole or in part, effective upon written notice to the Contractor if Contractor, becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor.

(c) If the State terminates this Contract under this **Section 15.1**, the State will issue a termination notice specifying whether Contractor must: (i) cease performance immediately, if the State terminates under subsections (a)(i), (a)(ii), or (b) above, (ii) cease performance if the breach is not cured within thirty (30) calendar days, if the State is terminating under subsection (a)(iii), or (iii) continue to perform for a specified period not to exceed sixty (60) calendar days. If it is later determined that Contractor was not in breach of this Contract, the termination will be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in **Section 15.2**.

(d) The State will only pay for (i) amounts due to Contractor for Services and Deliverables accepted by the State on or before the date Contractor is instructed to cease performance under subsection (c) above, (ii) any holdbacks retained by the State that are solely associated with already accepted Services and Deliverables, and (iii) work in process on a pro rata basis, provided that such work in process is not the reason for the State's termination. All costs owed to Contractor are 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 Support Services Fees. Further, Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys' fees, court costs, transition costs, and any costs the State incurs to procure the Services from other sources that would not have been incurred if Contractor had completed the Contract.

15.2 State Termination for Convenience. The State may terminate this Contract in whole or in part on thirty (30) calendar days' notice, without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance at the end of the thirty (30) day notice, or (b) continue to perform in accordance with **Section 15.4**. If the State terminates this Contract for convenience, the State will pay for all (a) accepted Services and Deliverables, (b) work in process on a pro rata basis, (c) any holdbacks retained by the State, to the extent they are associated with already accepted Services and Deliverables, and (d) all reasonable costs for State approved Transition Responsibilities. Notwithstanding the foregoing, if the State terminates this Contract for non-appropriation, the State will pay the Contractor for the above costs only to the extent funds allocated to the Statement of Work are available.

15.3 Termination by Contractor. If the State breaches a material provision of this Contract, then the Contractor will provide the State with written notice of the breach and a time period (not less than thirty (30) calendar days) to cure the breach. The Contractor may terminate this Contract if the State (i) materially breaches its obligation to pay the Contractor undisputed amounts due and owing under this Contract, (ii) breaches its other obligations under this Contract to an extent that makes it impossible or commercially impractical for the Contractor to perform the Services, or (iii) does not cure the material breach within the time period specified in a written notice of breach.

15.4 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, unless otherwise agreed to in writing by the parties) (the "**Transition Period**"), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract to continue without interruption or adverse effect, and to facilitate the orderly transfer of the Services to the State or its designees. Such transition assistance may include but is not limited to: (a) continuing to perform the Services at the established Contract rates (on a fixed price or time and material basis, depending on the Services provided); (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Services and Deliverables to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all State Materials and State Data; and (d) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed Deliverables prepared under this Contract as of the Contract termination or expiration date, provided Contractor has received full payment for such Deliverable; and (e) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, the "**Transition Responsibilities**"). The Term of this Contract is automatically extended through the end of the Transition Period.

15.5 Effect of Expiration or Termination.

- (a) Upon termination or expiration of this Contract for any reason:
 - (i) Contractor will be obligated to perform all Transition Responsibilities specified in **Section 15.4**.

- (ii) All licenses granted to Contractor in the State Materials and State Data will immediately and automatically also terminate. Contractor must promptly return to the State all State Materials and State Data not required by Contractor for its Transition Responsibilities, if any.
- (iii) Contractor will (A) return to the State all documents and tangible materials (any and copies) containing, reflecting, incorporating, or based on the State's Confidential Information, subject to **Section 13.4**; (B) permanently erase the State's Confidential Information from its computer systems and (C) certify in writing to the State that it has complied with the requirements of this **subsection (iii)**, in each case to the extent such materials are not required by Contractor for Transition Responsibilities if any.

(b) No expiration or termination of this Contract will affect the State's rights in any of the Deliverables that have already been paid for by the State.

15.6 Survival. This **Section 15** survives termination or expiration of this Contract.

16. Stop Work Order. The State may, at any time, order the Services of Contractor fully or partially stopped for its own convenience for up to ninety (90) calendar days at no additional cost to the State. The State will provide Contractor a written notice detailing such suspension (a "**Stop Work Order**"). Contractor must comply with the Stop Work Order upon receipt. Within 90 days, or any longer period agreed to by Contractor, the State will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate the Statement of Work. The parties will agree upon an equitable adjustment through the Change Control Process under **Section 2.2** to (i) extend the Milestone Dates under the Statement of Work, (ii) adjust Contractor Personnel staffing requirements, if as a result of the Stop Work Order, and (iii) adjust fees. Notwithstanding anything contained in this **Section 16**, Contractor shall use its commercially reasonable efforts to meet the Milestone dates specified in the Statement of Work without any extension. The State will not pay for any Services, Contractor's lost profits, or any additional compensation during a stop work period.

17. Contractor Representations and Warranties.

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

- (a) It is duly organized, validly existing, and in good standing as a corporation or other entity as represented under this Contract under the laws and regulations of its jurisdiction of incorporation, organization, or chartering;
- (b) It has the full right, power, and authority to enter into this Contract, to grant the rights and licenses granted under this Contract, and to perform its contractual obligations;
- (c) The execution of this Contract by its Representative has been duly authorized by all necessary organizational action; and

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

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

(a) The prices proposed by Contractor were arrived at independently, without consultation, communication, or agreement with any other bidder for the purpose of restricting competition; the prices quoted were not knowingly disclosed by Contractor to any other bidder to the RFP; and no attempt was made by Contractor to induce any other Person to submit or not submit a proposal for the purpose of restricting competition;

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

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

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

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

(a) when used by the State or any Authorized User in accordance with this Contract and the Documentation, the Deliverable or Documentation as delivered or installed by Contractor does not or will not:

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

(ii) fail to comply with any applicable Law;

(b) as provided by Contractor, the Deliverables do not contain any Harmful Code;

(c) all Documentation is and will be complete and accurate in all material respects when provided to the State such that Deliverables will not have any material undocumented feature; and

(d) it will perform all Services in a professional and workmanlike manner in accordance with industry standards and practices for similar services, using personnel with the requisite skill, experience and qualifications, and will devote adequate resources to meet its obligations under this Contract.

17.4 Performance Warranty.

(a) Contractor warrants that during the Warranty Period for the API and Configuration Deliverables, when used in the Operating Environment (or any successor thereto) in accordance with the Documentation, the API and Configuration Deliverables as provided by Contractor, meets all applicable Specifications in all material respects, and functions in all material respects, in conformity with this Contract and the applicable Specifications set forth in the Statement of Work.

(b) If, within the Warranty Period, such Deliverable fails to comply with the warranty as stated above ("**Defect**"), Contractor shall repair any Defects as necessary to bring such Deliverable into compliance with such warranty at no cost to the State, provided that for any such failure identified by the State, the State notifies Contractor in writing of such failure and describes the correct operation, provides Contractor with reasonably adequate documentation and evidence to reproduce such failure, and, when necessary, demonstrates such failure to Contractor so that the cause of such failure may be traced and corrected, in each case within the Warranty Period. Contractor shall make such warranty repairs within a reasonable period following such notification by the State, or as otherwise agreed between Contractor and the State, with the reasonableness of the response and correction time being determined based upon the nature and severity of the Defect and the impact the Defect is having on the State's operations and/or ability to fulfill its reporting duties and obligations. If Contractor fails to correct Defects in such Deliverable reported by the State during the Warranty Period within a reasonable time and such failure is not due to (A) the State's failure to fulfill any obligation under the Statement of Work with respect to such Deliverable, or (B) the Software (to the extent not affected by Configurations made by Contractor), the State shall, at its option, be entitled to (i) receive a refund or credit of professional fees paid to Contractor under such Statement of Work with respect to the Services giving rise to the Defect in such Deliverable, or (ii) elect to have the parties mutually agree upon any additional attempts by Contractor to correct such Deliverable. This subsection (b) sets forth the State's sole and exclusive remedy, and Contractor's sole and exclusive obligation, with respect to any claim that such Deliverable fails to comply with the warranty set forth in subsection (a).

(c) Contractor shall have no obligation under this Section to make warranty repairs attributable to: (i) the State's misuse or modification of such Deliverable; (ii) the State's failure to use corrections or enhancements made available by Contractor at no additional cost to the State; (iii) the State's use of such Deliverable in combination with any product other than those specified by Contractor; (iv) the quality or integrity of data from other automated or manual systems with which such Deliverable interfaces; (v) hardware, systems software, telecommunications equipment or software not a part of such Deliverable which is not operating in accordance with the manufacturer's specifications; or (vi) operation or utilization of such Deliverable in a manner not contemplated by this Contract or the Statement of Work.

(d) The warranty set forth in subsection (a) shall not apply with respect to hardware or software that is supplied by a third party to the State. The terms and conditions of the warranty to the State with respect to such hardware or software will be provided by the third party vendor of such hardware or software. Contractor bears no responsibility of any kind for such hardware or software and the State shall not look to Contractor for any warranty for such products.

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

17.6 State Warranty. State hereby represents and warrants that it has all necessary right and title to all State Material to allow Contractor to perform its Services hereunder.

18. Indemnification

18.1 General Indemnification. Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, reasonable costs, reasonable attorney fees, and expenses (including those required to establish the right to indemnification), to the extent arising out of third party claims or actions of: (a) any infringement, misappropriation, or other violation of any Intellectual Property Right of any Third Party in connection with any Service or Deliverable provided under the Statement of Work; and (b) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to negligent or more culpable 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).

18.2 Indemnification Procedure. The State will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially prejudiced. Contractor must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations. The State is entitled to: (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 18**, 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.

18.3 Infringement Remedies

(a) The remedies set forth in this **Section 18.3** are in addition to, and not in lieu of, all other remedies that may be available to the State under this Contract or otherwise, including the State's right to be indemnified for such actions.

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

- (i) procure for the State the right to continue to use such Deliverable or component thereof to the full extent contemplated by this Contract; or
 - (ii) modify or replace the materials that infringe or are alleged to infringe ("**Allegedly Infringing Materials**") to make the Deliverable and all of its components non-infringing while providing fully equivalent features and functionality.
- (c) If neither of the foregoing is possible notwithstanding Contractor's commercially reasonable efforts, then Contractor may direct the State to cease any use of any materials that have been enjoined or finally adjudicated as infringing, provided that Contractor will:
- (i) refund to the State all amounts paid by the State in respect of such Allegedly Infringing Materials and any other aspects of the Deliverables provided under the Statement of Work for the Allegedly Infringing Materials that the State cannot reasonably use as intended under this Contract.
- (d) If Contractor directs the State to cease using any Deliverables under **subsection (c)**, the State may terminate this Contract for cause under **Section 15.1**.
- (e) Contractor will have no liability for any claim of infringement arising solely from:
- (i) Use of the Deliverables for other than its intended use, as reflected in the Statement of Work or Documentation;
 - (ii) Contractor's compliance with any designs, specifications, or instructions of the State;
 - (iii) modification of the Deliverables by the State without the prior knowledge and approval of Contractor; or
 - (iv) Failure to use modifications or enhancements made available at no cost to the State by Contractor, provided Contractor has given the State written notice of such modification or enhancement, and such modification or enhancement will not degrade the Deliverable's performance,
 - (v) To the extent any infringement is caused by the Software.

unless the claim arose against the Deliverables independently of any of the above specified actions.

19. Damages Disclaimers and Limitations.

19.1 Disclaimer of Damages. NEITHER PARTY WILL BE LIABLE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS AND LOST BUSINESS OPPORTUNITIES.

19.2 Limitation of Liability. IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY UNDER THIS CONTRACT OR THE STATEMENT OF WORK, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT, EXCEED THE MAXIMUM AMOUNT OF FEES SPECIFIED IN THE STATEMENT OF WORK.

19.3 Exceptions. **Sections 19.1** (Disclaimer of Damages) and **19.2** (Limitation of Liability) above, shall not apply to:

- (a) Contractor's obligation to indemnify under **Section 18.1** of this Contract;
- (b) Contractor's obligations under **Section 12.3** of this Contract (Compromise of State Data), subject to the Security Breach Indemnity Cap; and
- (c) Damages arising from either party's recklessness, bad faith, or intentional misconduct.

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

20.1 Right of Audit. Upon written notice to Contractor, the State or its designee may audit Contractor to verify compliance with the Statement of Work. Contractor must retain, and provide to the State or its designee and the auditor general upon request, all billing and payment records related to the Statement of Work (other than Contractor's internal costs to provide services) through the Term of the Statement of Work and for four (4) years after the latter of termination, expiration, or final payment under the Statement of Work or any extension ("**Financial Audit Period**"). If an audit, litigation, or other action involving the records is initiated before the end of the Financial Audit Period, Contractor must retain the records until all issues are resolved.

20.2 Right of Inspection. Within ten (10) calendar days of providing notice, the State and its authorized representatives or designees have the right to enter and inspect Contractor's premises or any other places where Services are being performed, and examine, copy, and audit all billing and payment records related to the Statement of Work. 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 Statement of Work must be paid or refunded within forty-five (45) calendar days.

20.3 Application. This **Section 20** applies to Contractor, any Affiliate, and any Permitted Subcontractor that performs Services in connection with this Contract.

21. Insurance

21.1 Required Coverage

(a) **Insurance Requirements**. Contractor must maintain the insurances identified below and is responsible for all deductibles. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or result from Contractor's or a permitted subcontractor's

performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and (c) be provided by a company with an A.M. Best rating of “A” or better and a financial size of VII or better.

Required Limits	Additional Requirements
Commercial General Liability Insurance	
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations	Contractor must have their policy endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 0, or equivalent endorsement providing coverage for ongoing operations.
Umbrella or Excess Liability Insurance	
<u>Minimal Limits:</u> \$5,000,000 General Aggregate	Contractor must have their policy endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds.
Automobile Liability Insurance	
<u>Minimal Limits:</u> \$1,000,000 Per Accident	
Workers' Compensation Insurance	
<u>Minimal Limits:</u> Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
<u>Minimal Limits:</u> \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease.	

Professional Liability (Errors and Omissions) Insurance	
<u>Minimal Limits:</u> \$3,000,000 Each Occurrence \$3,000,000 Annual Aggregate	

(b) If Contractor's policy contains limits higher than the minimum limits, the State is entitled to coverage to the extent of the higher limits, subject to Contractor's limitation of liability under **Section 19.2**. The minimum limits are not intended, and may not be construed to limit any liability or indemnity of Contractor to any indemnified party or other persons.

(c) If any of the required policies provide claim-made coverage, the Contractor must: (a) provide coverage with a retroactive date before the effective date of the contract or the beginning of contract work; (b) maintain coverage and provide evidence of coverage for at least three (3) years after completion of the contract of work subject to the continued availability of commercially reasonable terms and conditions of such coverage; and (c) if coverage is canceled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, Contractor must purchase extended reporting coverage for a minimum of three (3) years after completion of work subject to the continued availability of commercially reasonable terms and conditions of such coverage.

(d) Contractor must: (a) provide insurance certificates to the State's Contract Administrator, containing the Contract number, at Contract formation and within 30 calendar days of the expiration date of the applicable policies; (b) require that permitted subcontractors maintain the required insurances contained in this Section; (c) notify the State's Contract Administrator within 30 days if any insurance is cancelled unless replacement coverage substantially meeting the requirements herein is obtained; and (d) waive all rights against the State for damages covered by insurance, unless prohibited by law. Failure to maintain the required insurance does not limit this waiver.

21.2 Non-waiver. This **Section 21** is not intended to and is not 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).

22. Dispute Resolution.

22.1 Unless otherwise specified in the Statement of Work, the parties will endeavor to resolve any Contract dispute in accordance with this **Section 22** (the "**Dispute Resolution Procedure**"). The initiating party will reduce its description of the dispute to writing (including all supporting documentation)

and deliver it to the responding party's Project Manager. The responding party's Project Manager must respond in writing within five (5) Business Days. The initiating party has five (5) Business Days to review the response. If after such review resolution cannot be reached, both parties will have an additional five (5) Business Days to negotiate in good faith to resolve the dispute. If the dispute cannot be resolved within a total of fifteen (15) Business Days, the parties must submit the dispute to the parties' Contract Administrators. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.

22.2 Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' Contract Administrators, and either Contract Administrator concludes that resolution is unlikely, or fails to respond within fifteen (15) Business Days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This **Section 22** does not limit either party's right to terminate this Contract.

23. General Provisions

23.1 Force Majeure.

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

(b) **State Performance; Termination.** In the event of a Force Majeure Event affecting Contractor's performance under this Contract, the State may suspend its performance hereunder until such time as Contractor resumes performance. The State may terminate this Contract by written notice to Contractor if a Force Majeure Event affecting Contractor's performance hereunder continues substantially uninterrupted for a period of five (5) Business Days or more. Unless the State terminates this Contract pursuant to the preceding sentence, any date specifically designated for Contractor's performance under this Contract will automatically be extended for a period up to the duration of the Force Majeure Event.

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

23.3 Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Contract is to be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party has authority to contract for or bind the other party in any manner whatsoever.

23.4 Media Releases. News releases (including promotional literature and commercial advertisements) pertaining to this Contract or project to which it relates must not be made without the prior written approval of the State, and then only in accordance with the explicit written instructions of the State. The State grants the Contractor the right to use its name as part of a general client list and as a specific citation with respect to this Contract within proposals and other directed marketing efforts.

23.5 Notices. All notices, requests, consents, claims, demands, waivers and other communications under this Contract must be in writing and addressed to the parties as follows (or as otherwise specified by a party in a notice given in accordance with this **Section 23.5**):

If to Contractor:	[CONTRACTOR ADDRESS]
	Email: [NOTICE CONTACT'S EMAIL ADDRESS]
	Attention: [NAME AND TITLE OF OFFICER TO RECEIVE NOTICES]
If to State:	Malathi Natarajan 525 W. Allegan, P.O. Box 30026, Lansing, MI 48933 Email: natarajanm@michigan.gov Attention: Malathi Natarajan – Buyer Specialist

Notices sent in accordance with this **Section 23.5** will be deemed effectively given: (a) when received, if delivered by hand (with written confirmation of receipt); (b) when received, if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by e-mail (with confirmation of transmission), if sent during normal business hours of the recipient, and on the next Business Day, if sent after normal business hours of the recipient; or (d) on the fifth (5th) day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.

23.6 Extended Purchasing Program. This Contract may be extended to MiDEAL members, subject to the mutual written agreement of the parties. MiDEAL members include local units of government, school districts, universities, community colleges, and nonprofit hospitals. A current list of MiDEAL members is available at www.michigan.gov/mideal. Upon written agreement between the State and

Contractor, this Contract may also be extended to other states (including governmental subdivisions and authorized entities). If extended, Contractor must supply all Contract Activities at the established Contract prices and terms, and the State reserves the right to impose an administrative fee and negotiate additional discounts based on any increased volume generated by such extensions. Contractor must submit invoices to, and receive payment from, extended purchasing program members on a direct and individual basis.

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

23.8 Assignment. Contractor may not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Contract, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the State's prior written consent. Except as set forth in this Section below, the State has the right to terminate this Contract in its entirety or any Services or Statements of Work hereunder, pursuant to **Section 15.1**, if Contractor delegates or otherwise transfers any of its obligations or performance hereunder, whether voluntarily, involuntarily, by operation of law or otherwise, and no such delegation or other transfer will relieve Contractor of any of such obligations or performance. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation or reorganization involving Contractor (regardless of whether Contractor is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations, or performance under this Contract for which the State's prior written consent is required. However, Contractor may assign the Contract to an Affiliate so long as (a) Contractor provides the State thirty (30) days prior written notice of such assignment, (b) the Affiliate is adequately capitalized and can provide adequate assurances that the Affiliate can perform the Contract and applicable Statement of Work; and (c) a Change Notice will be executed by the parties if necessary. No delegation or other transfer will relieve Contractor of any of its obligations or performance under this Contract. Any purported assignment, delegation, or transfer in violation of this **Section 23.8** is void.

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

23.10 Amendment and Modification; Waiver. No amendment to or modification of this Contract is effective unless it is in writing, identified as an amendment to this Contract and signed by an authorized Representative of both parties. Further, certain amendments to this Contract may require State Administrative Board Approval. No waiver by any party of any of the provisions of this Contract will be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Contract, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Contract will operate or be construed as a waiver. Nor will any single or partial exercise of any right, remedy, power or privilege under this Contract preclude the exercise of any other right, remedy, power or privilege.

23.11 Severability. If any term or provision of this Contract is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other term or provision of this Contract or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto will negotiate in good faith to modify this Contract so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

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

23.13 Equitable Relief. Each party to this Contract acknowledges and agrees that a breach or threatened breach by such party of **Section 11** (Intellectual Property Rights), **Section 12** (State Data), or 18 (Confidential Information) may give rise to irreparable harm to the other party for which monetary damages would not be an adequate remedy and in the event of a breach or a threatened breach by such party of any such obligations, the other party hereto may be, in addition to any and all other rights and remedies that may be available to such party at law, at equity or otherwise in respect of such breach, entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction.

23.14 Nondiscrimination. Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, Contractor and its Permitted 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, or mental or physical disability. Breach of this covenant is a material breach of this Contract.

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

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

Schedule A	Statement of Work
Schedule B	Pricing Schedule

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

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

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

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

23.19 Compliance with Laws. Contractor and its Representatives must comply with all Laws in its performance of its obligations under this Contract.

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

23.21 Entire Contract. This Contract, together with all Schedules, Exhibits, and the Statement of Work constitutes the sole and entire agreement of the parties to this Contract with respect to the subject matter of this Contract and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Contract, the Schedules, Exhibits, and the Statement of Work, the following order of precedence governs: (a) first, this Contract, excluding its Exhibits and Schedules, and the Statement of Work; and (b) second, the Statement of Work as of the Effective Date; and (c) third, the Exhibits and Schedules to this Contract as of the Effective Date. NO TERMS ON CONTRACTORS WEBSITE, BROWSE-WRAP, SHRINK-WRAP, CLICK-WRAP, CLICK-THROUGH OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS

PROVIDED WITH ANY OF THE SERVICES, OR DOCUMENTATION HEREUNDER WILL CONSTITUTE A PART OR AMENDMENT OF THIS CONTRACT OR IS BINDING ON THE STATE OR ANY AUTHORIZED USER FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE STATE AND THE AUTHORIZED USER, EVEN IF ACCESS TO OR USE OF SUCH SERVICE OR DOCUMENTATION REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.

Schedule A – Statement of Work

1. BACKGROUND

The State of Michigan (the “**State**”), Department of Technology, Management and Budget (“**DTMB**”) has issued this Statement of Work (SOW) to implement and maintain a Software Asset Management and Optimization solution (the “**SAMO Solution**”). The State anticipates this Contract to include technical implementation, training, and other related services to provide the SAMO Solution.

The State has licensed a commercial off-the-shelf (COTS) software application (the “**Software**”) for the base of the SAMO Solution, which will integrate with the State’s existing IT systems management tools.

2. SCOPE

The Contractor will provide the following services:

- Requirements and Design
 - Validation and Verification
 - Solution Architecture and Technical Design
- Solution Development and Software Configuration
- Solution Implementation
 - Software Installation
 - Data Conversion and Migration
 - Interfaces and Integration
 - Testing and Go-Live Production
- Training
- Future Service Engagements

The State reserves the right to purchase other related services in support of the solution.

3. ENTERPRISE IT ENVIRONMENT

DTMB runs a centrally managed IT environment for Executive-Branch State agencies. High-level details are:

End-User Workstations: DTMB manages 50,000+ Windows PC’s, both laptops, desktops, and workstations for the Enterprise. Over 95% of these devices subscribe to a consistent client architecture, where device components, software, and settings are standardized. DTMB uses Microsoft System Center Configuration Manager (SCCM) to manage these devices. Please see additional information below.

State Data-Center Servers:

DTMB manages physical servers, consisting of the following by operating system:

- Windows Server OS.
- Linux.
- HP-UX.
- Sun Solaris.
- IBM AIX.

DTMB has implemented BMC BladeLogic Datacenter Automation and associated modules to manage these devices.

In addition to the physical servers detailed above, DTMB manages virtual servers within its Virtual Center of Excellence. These virtual assets are run on VMWare VSphere.

DTMB has a small Microsoft Hypervisor 2012 R2 environment, consisting of six physical hosts, of these only two physical hosts are running ten virtual servers in production.

Network Devices:

DTMB manages local area networks (LAN), metropolitan area networks (MAN) and wide area networks (WAN) throughout the State enterprise. DTMB currently uses Solarwinds Network Management Software & Network Tools to monitor and manage configurations for routers and other layer 2 and layer 3 devices.

3.1. Enterprise IT Asset Management Applications and Components

In the course of implementing multiple administrative solutions, the State has acquired multiple solution components that may be leveraged as part of a SAMO Solution. These existing components are detailed here.

DTMB has implemented or is in process of implementing the following systems:

- Microsoft System Center Configuration Manager (SCCM) version 2012:
 - SCCM is used to manage all Windows workstations as well as Windows file, print and mail servers on the State network to provide software and configuration updates. It also gathers and reports on workstation and server information, including installed software. This solution is fully implemented on State end-user workstations.
- BMC Atrium Discovery and Dependency Mapping (ADDM):
 - ADDM is used to automatically maintain a complete and up-to-date inventory of the State data center Windows, UNIX and Linux servers, both physical and virtual. It is fully implemented on State servers.
- Orion Solarwinds:
 - The State currently uses Solarwinds Network Management Software & Network Tools.
- BMC Atrium Configuration Management Database (CMDB):
 - This is targeted to become the State's new Configuration Management Database (CMDB). Atrium CMDB will provide IT asset reporting, based on data consumed from Microsoft SCCM and BMC ADDM. Implementation will be completed in stages over the next two years. This project will require the awarded vendor to implement CMDB components required to support the SAMO Solution. Target go-live date is scheduled for August 2018.

3.2 CGI Advantage ERP System (SIGMA)

The State has contracted with CGI Technologies & Solutions, Inc. for development and implementation of a new enterprise resource planning (ERP) System. This project entails replacement of the State's enterprise wide financial system, the Michigan Administrative Information Network Financial Administration and Control System (MAIN FACS). Along with the financial modules, the contract also provides the State the option to implement requisition, workflow approval, purchasing, and inventory modules. Target go-live date for the new ERP System is currently set for October 2017. The SAMO Solution will be required to support future data feeds from the CGI Advantage ERP system for acquiring software license purchase and entitlement information.

4. SAMO SOLUTION REQUIREMENTS

Contractor will provide implementation services for the SAMO Software procured by the State which is Flexera Software's Flexnet Manager, as detailed in this SOW, which will integrate with other identified State systems.

The following are minimum requirements for the SAMO Solution. The Contractor is responsible for identifying any gaps in implementation.

4.1 Solution Hosting

Mandatory Minimum: The SAMO Solution must be hosted and operated within the State's datacenter.

4.2 The SAMO Solution must provide the following capabilities

- Manage software licenses in an on-going, consistent and effective way across vendors.
- Reconcile contracts and license entitlements with software installations.
- Identify opportunities to reduce licensing & support costs.
- Support the ability to import software license metrics (from simple desktop licensing to complex IBM PVU and Oracle license rules) and apply automatic intelligence to calculate upgrade and downgrade rights.
- Support software asset functions in both physical and virtual computing environments, including software assets deployed in virtual, sub-capacity instances within physical hosts.
- Support vendor true-up and audit compliance requirements.
- Provide insight into over/under spending on software due to complex license models and purchase agreements.
- Support the capturing of software usage data and determine the optimal user license types.
- Solution must be capable of supporting license agreements and contract information.
- Solution must be capable of supporting software license availability and fulfillment requests.
- Solution must support license optimization for desktops, servers and network devices
- Solution must support and categorize Publisher license models and types.
- The system must be capable of utilizing software license procurement information provided by license vendors.
- The system must include the ability to provide customizable reports.

5. SERVICES AND DELIVERABLES

5.1 Solution Design, Installation, Configuration and Implementation

Contractor will assist the State in finalizing and updating the SAMO Solution's system requirements and design for optimal performance as part of the project. This will include validation and verification of the documented requirements, and also providing input into the SAMO Solution architecture and design. Contractor will provide recommendations on the infrastructure environment (which may include hosting platform, operating system, database, middleware, and other associated peripherals) needed to host and run the SAMO Solution. During subsequent phases of the project, Contractor will identify and provide updates to the requirements and design as they occur.

As part of the project, Contractor will provide services and information necessary for State staff to submit and gain approval of the following documents:

- Formal Enterprise Architecture Solution Assessment.
- DTMB-0170 Security Assessment.

State approval of the above documents shall be considered deliverables as part of this milestone. In the event that revision and resubmittal of these documents are required, Contractor will provide these services.

Contractor will install and configure the Software. The State anticipates that all or most of the Software functionality can be provided through configuration of native software settings. However, programming may be needed for development of scripts, where applicable.

The State anticipates that Contractor will work with the State to implement the SAMO Solution. The State expects these services may include:

- Assistance with Software installation in the host environment.
- Data conversion and migration to the SAMO Solution.
- SAMO Solution Interface and integration with identified State systems.
- SAMO Solution Testing.
- Go-Live Production.

As part of solution testing, contractor will perform quality assurance (QA) testing, which will include development of scripts that the State may use for User Acceptance Testing.

Contractor will utilize their SAM Tool Implementation Methodology to design, install and configure the Flexnet Manager solution in two phases, phase I – ADDM (servers) and phase II – SCCM (desktops).

The Contractor will structure each Phase further into the following steps.

- **Planning and Design**
 - This step will focus on describing the complete list of requirements, in order to design the solution, organize logistics and resources and finalize detailed planning.
 - A detailed design will be derived from the requirements to formulate the blueprint of the implementation. Particular focus will be given to the State's infrastructure environment, including security governance, procedures and policies to confirm all necessary factors are accounted for.
- **Build**
 - This step will focus on the build of the core system to support the actual phase objective, Server or Desktop.
 - The scope of the build phase is to provision the environment and infrastructure in such a fashion that configuration of the solution may take place.
- **Configure**
 - This step will focus on the configuration of the solution in line with requirements, such that the solution will be ready to be deployed in line with the phase objective, of either Server or Desktop.
- **Deploy and Finalize**
 - This step will transition the completed configured solution to be deployed within the State's environment. Exact timings for each phase to be deployed will be in line with defined requirements. This step will also govern the transition support period post implementation go live.

The following Phase Steps will be utilized for the Server and Desktop Phases, with key activities described

Phase Step	Description
Planning and Design	<ul style="list-style-type: none"> • Detailed definition of SAMO Solution requirements • Detailed design of the architecture and intended integration ecosystem • Define system level requirements and align these to the State's governance and policies around architecture and security
Build	<ul style="list-style-type: none"> • Build the core system including servers and architecture • Install the solution application and perform basic configuration • Test the core system build
Configure	<ul style="list-style-type: none"> • Performance tune the solution and configure job schedules • Configure user access and roles • Configure adapters and refine automation processes • Configure discovery and inventory collection rules • Configure licenses and contracts • Report creation
Deploy and Finalize	<ul style="list-style-type: none"> • Prepare activities for the solution to go live and subsequent go live execution • Warranty and post transition support activities to support operational and technical administration of the SAMO Solution • Conduct End User Workshop to assist the State with becoming familiar with FlexNet Manager functionality to support the State's SAM practices and perform the State's day to day FlexNet Manager operations

The Contractor is required to provide a performance warranty in accordance with Section 17.4 of the Contract Terms for the duration of ninety (90) days, which begins after final acceptance of all the phases identified in Section 5.2 have been granted by the State. During the Warranty Period, Contractor's maintenance and support services will be provided free of charge to the State.

As part of implementation Contractor will provide operational and technical administration of the SAMO Solution until knowledge transfer is complete.

As an option after implementation, the State reserves the right to have Contractor continue these services beyond knowledge transfer. The Contractor is required to provide price for this optional service in Exhibit C – Pricing Table 4.

Contractor's Commitment

Contractor will provide vendor onboarding within the Solution, including and up to the following activities:

- Software deployment inventory: configuring adapters to pull in the State's available inventory to provide a normalized view of Software deployments within the State's environment.
- Software license entitlement: create and configure adapter to CGI data within FlexNet Manager to pull in available procurement/license entitlement data.
- Initial License Position: leverage Flexera solution to reconcile the software deployment inventory and the software license entitlement to generate an initial license position which will:
 - Provide initial awareness of over subscription (shelfware)
 - Show potential audit or license compliance exposures
 - Provide clear visibility to drill down into researching the accuracy and completeness source data

- **Training**

Contractor will train State staff in the use and administration of the SAMO Solution. The State contemplates the following user classes:

- Technical Administrator: responsible for proper operation and maintenance of the SAMO Solution, handling technical issues, solution settings, and addressing technical issues with the Contractor. Contractor will provide training for a maximum of two State staff as part of implementation.
- Business Administrator: responsible for management of the SAMO Solution data and managing SAMO Solution access, roles, and workflows. Contractor will provide training for a maximum of two State staff as part of implementation.
- Business User: responsibilities may include viewing and querying data, workflow submissions, and workflow approvals. Contractor will provide an ongoing, repeatable training solution, beginning with implementation and that will continue and be available throughout the Solution's lifetime, as new staff join the State's workforce and SAMO impacts processes and operations over time.

Additionally, Contractor will train State technical and business administrative staff in the techniques and processes to migrate new software products into the SAMO Solution, post-implementation.

At the project's end, Contractor will provide a formal and documented knowledge transfer to the State.

Contractor's Commitment:

Contractor will provide three defined user classes (Technical Administrator, Business Administrator, and Business User) with classroom training to assist the State in understanding how to operate and maintain the SAMO Solution. These courses will be tailored specifically to the State's environment and business objectives and will be conducted onsite at the State's office. The total training duration shall be performed across three days, with one day each (6-8 hours) per user class and will include the required training for a maximum of two State staff.

Contractor will collaborate with the State on the specific execution of the classroom training with respect to our proposed integration schedule. The Technical Administrator and Business Administrator classroom training will be designed to assist the State with becoming familiar with FlexNet Manager software functionality. The Business User training will be held as a series of discussions and hands-on exercises with stakeholders already defined. Exact topics to be covered in the Business User training should be prioritized and selected based on specific needs or focus areas that are of interest to the State. Topics, discussions, and activities include but not limited to:

Technical Administrator activities:

- Beacon management
- Managing agents and inventory sources
- Managing entitlement integration
- Application server management
- Technical troubleshooting
- Interpreting system events

- Performance monitoring and best practices
- Logging locations and filesystem management

Business Administrator and Business User Class activities:

- Collect and Register Discovery/Inventory Data
- Verify and Register HW Asset Data
- Manage Hardware Lifecycle
- Manage Hardware Exceptions
- Process New Hardware Purchases
- Process Baseline Software Purchases
- Process New Software Purchases
- Process Software Maintenance Purchases
- Process Software Upgrade Purchases
- Process Newly Signed Contracts
- Reconcile License Entitlements
- Manage Applications in ARL
- Manage Installed Software Reporting Requests
- Respond to Software Audits
- Automate Software Request and Approval Workflows

To facilitate training, the solution will be installed and operational in the training environment with sample data available for each topic to be covered.

Prior to conducting this training, Contractor will develop a suite of course materials tailored to users' roles and permissions, which will provide in depth knowledge of the solution. The course materials will be designed using the Knowledge Transfer materials developed during the deployment and Flexera Software's standard training materials as the foundation, and will then incorporate customizations and lessons learned throughout deployment. These materials will be tailored to the level of detail required for support teams to sustain, operate and report on the solution.

The training packages for each course will cover the State's requirements, and have an outline, objectives, operational scenarios and storyboards gleaned during the implementation, and frequently asked questions (FAQs).

- **Future Service Engagements**

The State, at its option, may purchase additional services relating to the SAMO Solution, to install and configure software, implement new features, or provide new integrations with other systems. Specific services and requirements will be detailed in an engagement statement of work. Such work will be completed on a firm, fixed price basis for specified deliverables.

At the State's option, Contractor will provide vendor-specific onboarding services. Elements specific to Vendor license positions which are not included as part of the current scope/fees of the project may include but not be limited to:

- **Audit Ready Report:** For more complex Vendors (i.e. IBM, Microsoft) it has been our experience that significant manual application of licenses is required to generate an accurate effective license position (audit ready report) which includes items such as:

- Validating non-discoverable products
- Entitlement evaluation back to source contract
- Analysis of Bundled Products
- Remediation recommendations to eliminate financial liabilities
- License Optimization recommendations
 - Financial impact analysis
 - Level of effort determination
 - Creation of prioritized list

6. CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES

6.1. Contractor Staff

The Contractor will provide sufficient qualified staffing to satisfy the deliverables of this Statement of Work. The Contractor will provide, and update when changed, an organizational chart indicating lines of authority for personnel involved in performance of this Contract and relationships of this staff to other programs or functions of the firm. This chart must also show lines of authority to the next senior level of management and indicate who within the firm will have prime responsibility and final authority for the work.

1. Subcontractors:
Contractor must provide a list of all subcontractors, including firm name, address, contact person, and a complete description of the work to be contracted. Include descriptive information concerning subcontractor's organization and abilities.

2. Project Manager - Single Point of Contact:
The Contractor will identify a Project Manager - Single Point of Contact (PM-SPOC). The duties of the PM-SPOC shall include, but not be limited to:
 - Assisting the State Project Manager
 - Scheduling Contractor resources and activities
 - Supporting the management of the Contract.
 - Facilitating dispute resolution.
 - Advising the State of performance under the terms and conditions of the Contract.

The State reserves the right to require a change in the current PM-SPOC if the assigned PM-SPOC is not, in the opinion of the State, adequately serving the needs of the State.

3. Key Personnel:
Contractor will provide the Key Personnel as specified in this section to work on and complete the project. All Key Personnel may be subject to the State's interview and approval process. Any key staff substitution must have the prior approval of the State.

The State has identified the following as Key Personnel for this project:

- Solution Architect –Technical Lead, who will develop the SAMO Solution's system design and plan integrations and data exchange with other State systems
- Software Specialist, who will be responsible for the SAMO Solution software's setup and operation
- Software Asset Management Specialist, who will undertake and be responsible for the data conversion and migration, and who will undertake the training of State staff.

Contractor must submit a letter of commitment for Key Personnel, signed by the identified resource, stating their commitment to work for the contractor/subcontractor on this project

contingent on award of the bid. If the identified personnel are currently assigned to a State project the contractor must provide a letter signed by the State Project Manager releasing the individual from the project upon execution of the contract.

6.2. Unauthorized Removal of Key Personnel

Changes to staffing must be planned and agreed by the State as it is acknowledged the unplanned removal of key personnel will interfere in the timely and proper execution of the Contract resulting in damage to the State. As it would be impracticable and extremely difficult to remedy the actual damage sustained by the State as a result of any Unauthorized Removal, the State will assess liquidated damages in the amount of \$25,000 per Unauthorized Removal or as agreed.

Failure of the Contractor to assign acceptable replacements to fill identified gaps in staffing as agreed will result in liquidated damages in excess of \$25,000 in the amount of \$833.00 per vacancy per day. In no event will the damage exceed \$50,000 per vacancy.

6.3. On Site Work Requirements

1. Location of Work

Onsite work is to be performed, completed, and managed within the Greater Lansing, MI area, including at State Secondary Complex office locations in Dimondale, MI. Contractor's offsite work may not exceed 50% of total hours involved in the project.

2. Hours of Operation:

- a. Normal State working hours are 8:00 a.m. to 5:00 p.m. EST, Monday through Friday, with work performed as necessary after those hours to meet project deadlines; No overtime will be authorized or paid.
- b. The State is not obligated to provide State management of assigned work outside of normal State working hours. The State reserves the right to modify the work hours in the best interest of the project.
- c. Contractor shall observe the same standard holidays as State employees. The State does not compensate for holiday pay.

3. Travel:

- a. No travel or expenses will be reimbursed. This includes travel costs related to training provided to the State by Contractor.
- b. Travel time will not be reimbursed.

4. Additional Security and Background Check Requirements:

Contractor's personnel must submit to Michigan State Police background checks, CJIS and drug tests for all staff identified for assignment to this project. In addition, proposed Contractor personnel will be required to complete and submit an RI-8 Fingerprint Card for the National Crime Information Center (NCIC) Finger Prints, if required by the project.

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

7. STATE STAFF, ROLES, AND RESPONSIBILITIES

The State will provide the following resources for the Contractor's use on this project:

- Work space.
- Internet access.

- Secure VPN access.
- Printer and copier access.

Contractor may request other resources, which the State will consider, based on justification.

The State will provide physical server maintenance for internally hosted SAMO Solution. The State will perform all internal functions such as maintenance, patches identification, patch publication and upgrades to the operating systems and problem management of the physical hardware infrastructure (for example but not limited to, servers, SAN, routers, networks, disks).

The State will provide appropriate sample data, free of sensitive-classified data, to be used to populate the non-production environments and to provide test data that represents production data.

The State staff will be responsible for executing User Acceptance Testing (UAT) for the SAMO system.

The State is responsible for all customizations and configuration changes, authoritative data sources and applications integrated with the SAMO Solution i.e. scan configuration for SCCM and the Patterns enabled for ADDM.

The State project team will consist of Subject Matter Experts (SME's), project support, and a DTMB and Agency project manager:

State Project Manager

DTMB will provide a Project Manager who will be responsible for the State's infrastructure and coordinate with the Contractor in determining the system configuration.

The State's Project Manager will provide the following services:

- Provide access to State facilities, as needed.
- Coordinate the State resources necessary for the project.
- Facilitate coordination between various external contractors.
- Facilitate communication between different State departments/divisions.
- Provide acceptance and sign-off of deliverable/milestone.
- Review and sign-off of invoices.
- Resolve project issues.
- Escalate outstanding/high priority issues.
- Utilize change control procedures.
- Conduct regular and ongoing review of the project to confirm that it meets original objectives and requirements.
- Document and archive all important project decisions.
- Arrange, schedule and facilitate State staff attendance at all project meetings.

8. PROJECT MANAGEMENT

The Contractor will carry out this project under the direction and control of DTMB in accordance with the State Unified Information Technology Environment (SUITE) methodology which includes standards for project management, systems engineering, and associated forms and templates which is available at <http://www.michigan.gov/suite>. DTMB will assign a project manager who will maintain the project plan and schedule with the Contractor's assistance and input, and provide project updates. DTMB will give a minimum of two weeks' advance notice to the Contractor of any changes to the project schedule that impacts services the Contractor has agreed to perform under this SOW, cost established in Exhibit C - Pricing, or Contract Terms and will be in effect upon execution of Change Notice per section 2.2 Change Control Process of the attached Contract Terms and Conditions. For all other changes to the project

schedule, the State Project Manager must obtain signature from the Contractor acknowledging agreement with the schedule change and send the updated schedule and Contractor's signature to State's Contract Administrator to be added to the contract folder prior to implementing the change. Contractor shall complete all assigned tasks by their established deadlines.

At the State's option, Contractor will provide additional project management resources, including but not limited to a dedicated project manager separate from the Single Point of Contact.

Orientation Meeting

Within fifteen business days from execution of the contract, the Contractor will be required to attend an orientation meeting to discuss the content and procedures of the SOW. The meeting will be held in Lansing, Michigan, at a date and time mutually acceptable to the State and the Contractor. The State shall bear no cost for the time and travel of the Contractor for attendance at the meeting.

Project Status

The State will require the Contractor to attend weekly status meetings, to review the Contractor's performance under the SOW, for the duration of the project. The meetings will be held in Lansing, Michigan, or by teleconference, as mutually agreed by the State and the Contractor. The State shall bear no cost for the time and travel of the Contractor for attendance at the meeting.

9. ACCEPTANCE

Acceptance of the SAMO Solution will be conducted in the manner specified in Section 9 of the attached Contract Terms and Conditions.

The State will grant final acceptance on completion of knowledge transfer after implementation of both Phase 1 and Phase 2, upon which the holdback amounts in Table 2: Project Work and Deliverables Cost Detail of Exhibit C - Pricing, will be released to Contractor.

10. COMPENSATION AND PAYMENT

10.1. Method of Payment

- Services will be paid at the sign-off of defined project milestones. For purposes of the initial project to install and implement the SAMO Solution, these milestones and payments are defined in Exhibit C – Pricing, Table 2: Project Work and Deliverables Cost Detail. Future Service Engagements will be paid, according to a defined schedule in the individual engagement statement of work. The State reserves the right to hold back up to a ten percent (10%) portion of payments, which will become payable to the Contractor upon final acceptance.
- Solution Software will be purchased as needed, to support Solution Implementation.
- Software Maintenance and Support will be paid for the installed Software, starting after the Warranty Period has expired.

10.2. Travel

The State will not pay for any travel expenses, including hotel, mileage, meals, parking, etc. Travel time will not be reimbursed.

11. ASSUMPTIONS

1. Hardware and operating systems required for the internally hosted SAMO Solution in the non-production environment will be available no later than the fourth week after the start of the project. Hardware and software required for Production will be made available by the State no later than week eight respectively, after the start of the project.
2. It is assumed for auditing and reporting requirements, out of the box (OOTB) reports provided by Flexnet Manager will be deployed. The project scope does not entail developing and deploying any custom reports.
3. There are known limitations with Flexera Software products (i.e. ADA Compliance) as identified in the VPATs. Should a situation where The State's accessibility requirements are not met due to product limitations, we will work with the State to perform an impact analysis. We will present the limitations and findings to the State and cooperate with the State, Flexera Software and the State's external accessibility testing vendor in their efforts to find an acceptable alternative for the specific, inaccessible feature. However, Deloitte is not responsible for the implementation and/or customization required for these acceptable alternatives.
4. Deloitte is not responsible for the quality of software discovery data imported into the SAMO Solution.
5. Deloitte is not responsible for any non-configurable defects within the Flexera Software Flexnet Manager application.

Schedule B – Pricing Schedule

Table 1: Solution Total Cost	Cost (\$)
Project Work and Deliverables Cost (see table 2 below)	\$391,001
Total Cost	\$391,001

Table 2: Project Work and Deliverables Cost Detail	Milestone Amount (\$)	10% Holdback (\$)	Net Payment Amount (\$), less Holdback
Requirements and Design	\$74,687	\$7,469	\$67,218
Development and Configuration	\$78,946	\$7,895	\$71,051
Data Conversion and Migration, Interfaces, Integration, and Testing	\$65,935	\$6,594	\$59,342
SIGMA Integration	\$34,300	\$3,430	\$30,870
SIGMA Testing	\$7,840	\$784	\$7,056
Phase I ADDM Integration	\$8,820	\$882	\$7,938
Phase I Testing	\$2,940	\$294	\$2,646
Phase I Go-Live and Performance Warranty	\$37,104	\$3,710	\$33,394
Phase II SCCM Integration	\$6,860	\$686	\$6,174
Phase II Testing	\$14,700	\$1,470	\$13,230
Phase I Go-Live and Performance Warranty	\$15,902	\$1,590	\$14,312
Training	\$15,274	\$1,527	\$13,747
Knowledge Transfer	\$27,693	\$2,769	\$24,923
Table 2 Totals	\$391,001	\$39,100	\$351,901
Option to ADDM and SCCM: Atrium CMDB Integration	\$58,800	\$5,880	\$52,920
Option to ADDM and SCCM: Atrium CMDB Testing	\$33,320	\$3,332	\$29,988
Option to ADDM and SCCM: Go-Live and Performance Warranty	\$72,520	\$7,252	\$65,268
Option to ADDM and SCCM Total	\$469,315	\$46,931	\$422,383

