

REQUEST FOR PROPOSAL

RFP#910526

Adobe Products for Resale

RFP Timeline	
RFP Issue Date:	January 6, 2026
Deadline for Respondent Questions to MSU:	January 13, 2026
RFP Response Due Date:	January 28 2026, 3:00 pm Eastern

RFP Contact	
Name:	Lisa True
Unit:	MSU Procurement
Email:	truelisa@msu.edu

DESCRIPTION: Michigan State University (the “**University**” or “**MSU**”) is soliciting proposals through this Request for Proposal (“**RFP**”) for the purpose of Adobe products for resale. The requested services are more thoroughly described under the Scope of Work Section of this RFP. Firms intending to respond to this RFP are referred to herein as a “**Respondent**” or “**Supplier**.”

PROPOSAL INSTRUCTIONS

1. **PROPOSAL PREPARATION.** The University recommends reading all RFP materials prior to preparing a proposal, particularly these Proposal Instructions. Respondents must follow these Proposal Instructions and provide a complete response to the items indicated in the table below. References and links to websites or external sources may not be used in lieu of providing the information requested in the RFP within the proposal. Include the Respondent's company name in the header of all documents submitted with your proposal.

Document	Description	Response Instructions
Cover Page	Provides RFP title and number, important dates, and contact information for MSU	Informational
Proposal Instructions	Provides RFP instructions to Respondents	Informational
Respondent Information Sheet	Company and Contact Information, and Experience	Respondent must complete and submit by proposal deadline
Scope of Work	Describes the intended scope of work for the RFP	Respondent must complete and submit by proposal deadline
Pricing	Pricing for goods and services sought by the University through this RFP	Respondent must complete and submit by proposal deadline
Master Service Agreement	Provides legal terms for a contract awarded through this RFP	Deemed accepted by Respondent unless information required in Section 9, Master Service Agreement is submitted by proposal deadline

2. **EXPECTED RFP TIMELINE.**

Activity	Date
RFP Issue Date:	January 6, 2026
Deadline for Respondent Questions to MSU:	January 13, 2026
RFP Response Due Date:	January 28, 2026, 3:00 pm Eastern

3. **CONTACT INFORMATION FOR THE UNIVERSITY.** The sole point of contact for the University concerning this RFP is listed on the Cover Page. Contacting any other University personnel, agent, consultant, or representative about this RFP may result in Respondent disqualification.
4. **QUESTIONS.** Respondent questions about this RFP must be submitted electronically by email to the contact listed on the cover page of this RFP. In the interest of transparency, only written questions are accepted. Answers to all questions will be sent to Respondents via email. Submit questions by referencing the following: (i) Question Number, (ii) Document Name, (iii) Page Number, and (iv) Respondent Question. Please refer to **Section 2** above for the deadline to submit questions.

5. **MODIFICATIONS.** The University may modify this RFP at any time. Modifications will be sent via email. This is the only method by which the RFP may be modified.
6. **DELIVERY OF PROPOSAL.** The Respondent must submit its proposal, all attachments, and any modifications or withdrawals electronically via email to the contact listed on the cover page of this RFP. **The price proposal should be saved separately from all other proposal documents and should be sent as a separate attachment from the other proposal documents.** The Respondent should submit all documents in a modifiable (native) format (examples include but are not limited to: Microsoft Word or Excel and Google Docs or Sheets). In addition to submitting documents in a modifiable format, the Respondent may also submit copies of documents in PDF. Respondent's failure to submit a proposal as required may result in disqualification. The proposal and attachments must be fully uploaded and submitted prior to the proposal deadline. **Do not wait until the last minute to submit a proposal.** The University **may not** allow a proposal to be submitted after the proposal deadline identified in the Cover Page, even if a portion of the proposal was already submitted.
7. **MANDATORY MINIMUM REQUIREMENTS.** The RFP may contain minimum qualifications, which will be identified as "**Mandatory Minimum Requirements**" in the Scope of Work Section of this RFP. If the RFP does contain mandatory minimum requirements, any proposal not meeting these minimum requirements **will be deemed non-qualified and will not be considered.** All proposals meeting these mandatory minimum requirements will proceed for review and evaluation consistent with **Section 8, Evaluation Process.**
8. **EVALUATION PROCESS.** The University will convene a team of individuals from various Departments within MSU to evaluate each proposal based on each Respondent's ability to provide the required services, taking into consideration the overall cost to the University. The University may require an oral presentation of the Respondent's proposal; conduct interviews, research, reference checks, and background checks; and request additional price concessions at any point during the evaluation process. The following criteria will be used to evaluate each proposal:

Criteria	Weight
Price/Overall Value to the University	[50]%
Experience and Qualifications	[25]%
Support and Service Delivery Standards	[25]%
	100%

9. **MASTER SERVICE AGREEMENT.** The University strongly encourages strict adherence to the terms and conditions set forth in the Master Service Agreement. The University reserves the right to deem a proposal non-responsive for failure to accept the Master Service Agreement. Nevertheless, the Respondent may submit proposed changes to the Master Service Agreement in track changes (i.e., visible edits) with an explanation of the Respondent's need for each proposed change. Failure to include track changes with an explanation of the Respondent's need for the proposed change constitutes the Respondent's acceptance of the Master Service Agreement. General statements, such as "the Respondent reserves the right to negotiate the terms and conditions," may be considered non-responsive.
10. **CLARIFICATION REQUEST.** The University reserves the right to issue a Clarification Request to a Respondent to clarify its proposal if the University determines the proposal is not clear. Failure to respond to a Clarification Request timely may be cause for disqualification.
11. **RESERVATIONS.** The University reserves the right to:
 - a. Disqualify a Respondent for failure to follow these instructions.

- b. Discontinue the RFP process at any time for any or no reason. The issuance of an RFP, your preparation and submission of a proposal, and the University's subsequent receipt and evaluation of your proposal does not commit the University to award a contract to you or anyone, even if all the requirements in the RFP are met.
- c. Consider late proposals if: (i) no other proposals are received; (ii) no complete proposals are received; (iii) the University received complete proposals, but the proposals did not meet mandatory minimum requirements or technical criteria; or (iv) the award process fails to result in an award.
- d. Consider an otherwise disqualified proposal, if no other proposals are received.
- e. Disqualify a proposal based on: (i) information provided by the Respondent in response to this RFP; or (ii) if it is determined that a Respondent purposely or willfully submitted false or misleading information in response to the RFP.
- f. Consider prior performance with the University in making its award decision.
- g. Consider total-cost-of-ownership factors (e.g., transition and training costs) when evaluating proposal pricing and in the final award.
- h. Refuse to award a contract to any Respondent that has outstanding debt with the University or has a legal dispute with the University.
- i. Require all Respondents to participate in a Best and Final Offer round of the RFP.
- j. Enter into negotiations with one or more Respondents on price, terms, technical requirements, or other deliverables.
- k. Award multiple, optional-use contracts, or award by type of service or good.
- l. Evaluate the proposal outside the scope identified in **Section 8, Evaluation Process**, if the University receives only one proposal.
- m. Obtain and consider information from other sources concerning a Respondent, such as the Respondent's capability and performance under other contracts, the qualifications of any subcontractor identified in the Proposal, the Respondent's financial stability, past or pending litigation, and other publicly available information.
- n. Utilize third parties to assist in the evaluation process, provided such parties are subject to confidentiality requirements.

12. AWARD RECOMMENDATION. The contract will be awarded to the responsive and responsible Respondent who offers the best value to the University, as determined by the University. Best value will be determined by the Respondent meeting any mandatory minimum requirements and offering the best combination of the factors in **Section 8, Evaluation Process**, and price, as demonstrated by the proposal. The University will email a **Notice of Award** to all Respondents. A Notice of Award does not constitute a contract, as the parties must reach final agreement on a signed contract before any services can be provided. The awarded Respondent is prohibited from partnering with losing bidders unless the RFP specifically allows for such arrangement, and any violation of this prohibition may result in disqualification of the awarded Respondent.

13. GENERAL CONDITIONS. The University will not be liable for any costs, expenses, or damages incurred by a Respondent participating in this solicitation. The Respondent agrees that its proposal will be considered an offer to do business with the University in accordance with its proposal, including the Master Service Agreement, and that its proposal will be irrevocable and binding for a period of 180 calendar days from date of submission. If a contract is awarded to the Respondent, the University may, at its option, incorporate any part of the Respondent's proposal into the contract. This RFP is not an offer to enter into a contract. This RFP may not provide a complete statement of the University's needs, or contain all matters upon which agreement must be reached. Proposals submitted via email are the University's property.

14. FREEDOM OF INFORMATION ACT. Respondent acknowledges that any responses, materials, correspondence or documents provided to the University may be subject to the State of Michigan

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Freedom of Information Act (“FOIA”), Michigan Compiled Law 15.231 *et seq.*, and may be released to third parties in compliance with FOIA or any other law. Questions about the Respondent's own performance can be directed to the RFP Contact indicated on page 1 of this document. Questions about the overall evaluation and any other post-award inquiries must be submitted via a formal FOIA request to the [Michigan State University FOIA office](#).

RESPONDENT INFORMATION SHEET

Please complete the following Information Sheet in the space provided:

Information Sought	Response
Contact Information	
Respondent's sole contact person during the RFP process. Include name, title, address, email, and phone number.	
Person authorized to receive and sign a resulting contract. Include name, title, address, email, and phone number.	
Respondent Background Information	
Legal business name and address. Include business entity designation, e.g., sole proprietor, Inc., LLC, or LLP.	
What state was the company formed in?	
Main phone number	
Website address	
DUNS# AND/OR CCR# (if applicable):	
Number of years in business and number of employees	
Legal business name and address of parent company, if any	
Has your company (or any affiliates) been a party to litigation against Michigan State University? If the answer is yes, then state the date of initial filing, case name and court number, and jurisdiction.	
Experience	
Describe relevant experiences from the last 5 years supporting your ability to successfully manage a contract of similar size and scope for the services described in this RFP.	
Experience 1	
Company name	
Contact name	
Contact role at time of project	
Contact phone	
Contact email	
1. Project name and description of the scope of the project 2. What role did your company play? 3. How is this project experience relevant to the subject of this RFP?	
Start and end date (mm/yy – mm/yy)	
Status (completed, live, other – specify phase)	
Experience 2	
Company name	
Contact name	
Contact role at time of project	
Contact phone	

Contact email	
1. Project name and description of the scope of the project 2. What role did your company play? 3. How is this project experience relevant to the subject of this RFP?	
Start and end date (mm/yy – mm/yy)	
Status (completed, live, other – specify phase)	
Experience 3	
Company name	
Contact name	
Contact role at time of project	
Contact phone	
Contact email	
1. Project name and description of the scope of the project 2. What role did your company play? 3. How is this project experience relevant to the subject of this RFP?	
Start and end date (mm/yy – mm/yy)	
Status (completed, live, other – specify phase)	

SCOPE OF WORK

Please address each of the sections below in a written response, which can be completed on a separate sheet (using the same section headings).

1. Background

Michigan State University (MSU) is seeking a reliable distributor to provide Adobe software and related services that support creative, productivity, and document management needs across its departments. The goal is to secure competitive pricing, ensure compliance with licensing requirements, and guarantee ongoing technical support for the University.

2. Overview

MSU seeks proposals for the supply, licensing, and support of Adobe products, including but not limited to:

- Creative Cloud
- Acrobat Pro
- Captivate
- Dreamweaver
- Illustrator
- InDesign
- Photoshop
- Premiere Pro

3. Intent

The products and services will be utilized by multiple MSU units, including academic, administrative, and research departments.

4. Timeline

- **Delivery:** Products must be delivered within 24 hours of order receipt.
- **Performance:** Supplier must meet agreed delivery and setup timelines

5. Definitions & Applicable Documents

- **Adobe ETLA:** Adobe Enterprise Term License Agreement.
- **VIP:** Adobe Value Incentive Plan.
- **MSU Procurement Policies:** See Procurement Guidebook, MBP Section 270.

6. Requirements

Mandatory Minimum Requirements

- Supplier **must** provide valid, legal Adobe licenses and subscriptions.
- Supplier **must** comply with Adobe's licensing terms and MSU procurement policies.
- Supplier **must** offer volume licensing agreements (ETLA, VIP).
- Supplier **must** provide technical support and training resources.

Performance/Technical Requirements

- Supplier to provide all listed Adobe products and ensure compatibility with MSU systems.
- Supplier to support license renewals, upgrades, and compliance.
- Supplier to provide installation, activation, and deployment instructions.

Work Environment & Qualifications

- Supplier to ensure products are delivered to MSU's Adobe console securely and within 24 hours of receipt of purchase order
- Supplier to provide qualified personnel for support and training.

Implementation & Training

- Supplier to assist with installation and provide training for end users and administrators upon request.

7. Expected Deliverables

- Formal agreement for supply and support of Adobe products.
- Documentation on pricing, licenses, terms, and conditions.
- Monthly/quarterly reporting on purchases, renewals, and licensing status and true-up conferences upon request.
- Access to product documentation, keys, and installation instructions as applicable.

8. Special Pricing Structures

- Supplier to provide discounts for bulk or long-term purchases.
- Supplier to outline payment terms, excluding taxes.

9. Acceptance Criteria

- All products and services must meet the requirements outlined above.
- Deliverables must pass MSU's quality assurance and user acceptance testing.

10. Milestones & Deliverables

- Order receipt tracking
- Product delivery reporting
- Setup and activation documentation
- Training completion reporting
- Ongoing support ad hoc

11. Maintenance & Support

- Supplier to provide options for post-delivery support.
- Supplier to outline detailed escalation process for problem resolution.

12. General Conditions

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- Supplier must provide insurance as required by MSU's Master Service Agreement.

PRICING

Please include a Pricing proposal as identified below on a separate sheet.

Proposers should provide a clear and comprehensive pricing schedule that outlines any and all costs associated with the procurement of Adobe products and related services.

Pricing should include, at a minimum, unit costs, volume discounts, subscription terms, renewal rates, and any applicable fees. Proposals should also identify any special pricing structures for bulk purchases or long-term agreements, as well as payment terms and conditions. The University expects pricing to be presented in a transparent format that facilitates comparison and evaluation of overall value.



MASTER SERVICE AGREEMENT

(attached on following page)

Please refer to Section 9 of the RFP Instructions when reviewing the Master Services Agreement terms and conditions.

Master Software Supply and Resale Agreement

This Master Supply Agreement (this “**Agreement**”), entered into as of **Month, Day, Year** (“**Effective Date**”), is made by and between Michigan State University, with offices located at 426 Auditorium Rd, East Lansing, MI 48824 (“**MSU**” or “**University**”) and **Name of Supplier**, with offices at **Address, City, State, Zip** (“**Supplier**”). MSU and Supplier are sometimes referred to in this Agreement individually as a “party” and collectively as the “parties.”

1. TERM

- 1.1 The term of this Agreement shall commence on the Effective Date and shall continue for a period of three (3) years, unless earlier terminated in accordance with paragraph 12 (the “**Term**”). Any extension of the Term will be subject to mutual written agreement between the parties.

2. SUPPLY OF SOFTWARE AND SERVICES

- 2.1 **Software and Services.** Supplier hereby agrees to supply and deliver to MSU the software products and support services (collectively, the “**Software**” and “**Services**”) listed on Schedule A to this Agreement (the “**Product and Service Sheet**”), at the prices set forth therein, including any applicable discount. MSU will issue individual purchase orders (each, a “**Purchase Order**”) to Supplier, which will specify the quantity and time for delivery of ordered Software and related Services, if any. For the avoidance of doubt, this Agreement does not establish an exclusive supply relationship; MSU may purchase similar or the same products from third parties other than Supplier. MSU makes no commitment that it will purchase any particular volume of Software from Supplier.
- 2.2 **PO Amendment and Modification.** No change to a Purchase Order is binding upon University unless it is in writing, specifically states that it amends the Purchase Order and is signed by an authorized representative of University.
- 2.3 **Delivery.** Supplier shall deliver the Software in the quantities and on the date(s) specified in the relevant Purchase Order. Delivery of the Software occurs when Supplier makes the Software available to University via electronic download from a secure website specified by Supplier. Delivery of the Software must include any necessary license key(s) required for the intended use of Software by the University’s employees, faculty, volunteers and students (collectively, its “**End Users**”).
- 2.4 **Price.** The price of the Software and Services are the prices stated in the Product and Service Sheet (the “**Price**”). Unless otherwise specified in the Purchase Order, the Price includes all costs, insurance, customs duties and fees and applicable taxes. No increase in the Price is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of University.
- 2.5 **Software Publisher Warranty.** Supplier shall extend to MSU and its End Users the rights and benefits, to the extent that the same are not extinguished by the passage of time, of any warranties, service life policies and patent indemnities of any third-party manufacturer and any maintenance and overhaul agencies of and for the Software which Supplier may have to the extent that the same are assignable and transferable. Supplier also hereby grants to MSU rights of subrogation relating to any claim which Supplier may have under such warranties (if any) concerning the Software.

2.6 Software Representations. Supplier hereby represents and warrants that (i) it has obtained any and all necessary licenses, permissions and consents from third parties to license the Software and Services, and (ii) use of the Software and Services by University End Users will not violate the intellectual property rights of any third party. Supplier agrees to defend, indemnify and hold harmless MSU for any violation of this Section by Supplier.

3. SOFTWARE RESALE

3.1 Appointment of Reseller. Supplier hereby appoints University, and University hereby accepts the appointment, to act as Supplier's non-exclusive reseller of the Software to certain End Users making purchases through MSU's Tech Store during the Term in accordance with the terms and conditions of this Agreement, and grants to University the rights described in Section 3.2 below.

3.2 Reseller Software Rights. Supplier hereby grants to University a nonexclusive, nontransferable, non-sublicensable right during the Term: (a) to resell the Software to its End Users making purchases through MSU's Tech Store; and (b) to include the Software name and trademarks in University's sales and marketing materials. Supplier hereby represents and warrants that (i) it has the right to grant the licenses set forth above, (ii) it has obtained any and all necessary licenses, permissions and consents from third parties to license the Software, (iii) that resale of the Software by University will not infringe the intellectual property rights of any third party; and (iv) use of the Software by University End Users will not violate the intellectual property rights of any third party.

3.3 Resale Pricing. University may unilaterally establish its own resale prices for sale of the Software to its End Users making purchases through MSU's Tech Store.

3.4 Sales Materials. Supplier will provide any information, material, and support that University may reasonably request regarding the marketing, advertising, promotion, and sale of the Software to its End Users making purchases through MSU's Tech Store. University may participate, at its own expense, in any marketing, advertising, promotion, and sales programs it deems necessary to sell the Software to its End Users.

4. SUBCONTRACTORS

4.1 Supplier will not, without the prior written approval of MSU, which consent may be given or withheld in MSU's sole discretion, engage any third party to perform Services. MSU's approval of any such third party (each approved third party, a "**Subcontractor**") does not relieve Supplier of its representations, warranties or obligations under this Agreement. Without limiting the foregoing, Supplier will:

- (a) be responsible and liable for the acts and omissions of each such Subcontractor (including such Subcontractor's employees who, to the extent providing Services, shall be deemed Supplier personnel) to the same extent as if such acts or omissions were by Supplier or its employees;
- (b) name MSU a third party beneficiary under Supplier's contract with each Subcontractor with respect to the Services;
- (c) be responsible for all fees and expenses payable to, by or on behalf of each Subcontractor in connection with this Agreement, 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

5. PAYMENT

- 5.1 Supplier's invoices must conform to the requirements set forth by the University at <https://upl.msu.edu/for-suppliers/policiesrequirements/invoicing-payments/index.html>. Invoices are due and payable by the University, in accordance with the University's standard payment procedures, which are 2.75% 10 days, net 30 days after receipt, provided the University determines that the invoice was properly rendered. Supplier may only charge for Software delivered and Services performed as specified in the Product and Service Sheet. Invoices must include an itemized statement of all charges. MSU is exempt from state sales tax for direct purchases and may be exempt from federal excise tax, if Services purchased under this Agreement are for MSU's exclusive use.
- 5.2 MSU has the right to withhold payment of any disputed amounts until the parties agree as to the validity of the disputed amount. MSU will notify Supplier of any dispute within a reasonable time. Payment by MSU will not constitute a waiver of any rights as to Supplier's continuing obligations, including claims for deficiencies or substandard Services.
- 5.3 Without prejudice to any other right or remedy it may have, MSU reserves the right to set off at any time any amount then due and owing to it by Supplier against any amount payable by MSU to Supplier.
- 5.4 Supplier is solely responsible for any travel or other costs or expenses incurred by Supplier in connection with the performance of the Services, and in no event shall MSU reimburse Supplier for any such costs or expenses.

6. RELATIONSHIP OF THE PARTIES

- 6.1 Supplier is an independent contractor of MSU, and this Agreement shall not be construed to create any association, partnership, joint venture, employee or agency relationship between Supplier and MSU for any purpose. Supplier has no authority (and shall not hold itself out as having authority) to bind MSU and Supplier shall not make any agreements or representations on MSU's behalf without MSU's prior written consent.
- 6.2 Without limiting paragraph 6.1, Supplier will not be eligible under this Agreement to participate in any vacation, group medical or life insurance, disability, profit sharing or retirement benefits or any other fringe benefits or benefit plans offered by MSU to its employees, and MSU will not be responsible for withholding or paying any income, payroll, Social Security or other federal, state or local taxes, making any insurance contributions, including unemployment or disability, or obtaining worker's compensation insurance on Supplier's behalf. Supplier shall be responsible for, and shall indemnify MSU against, all such taxes or contributions, including penalties and interest. Any persons employed by Supplier in connection with the performance of the Services shall be Supplier's employees and Supplier shall be fully responsible for them.

7. CONFIDENTIALITY

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

7.2 Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Agreement or to use such Confidential Information for any purposes whatsoever other than the performance of this Agreement. 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 Supplier’s subcontractor is permissible where (a) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor’s responsibilities; and (b) Supplier obligates the subcontractor in a written contract to maintain MSU’s Confidential Information in confidence. At MSU’s request, any of the Supplier’s representatives may be required to execute a separate agreement to be bound by the provisions of this Section 13.2.

7.3 Cooperation to Prevent Disclosure of Confidential Information. Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement. Each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.

7.4 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 MSU, at the sole election of MSU, the immediate termination, without liability to MSU, of this Agreement.

7.5 Surrender of Confidential Information upon Termination. Upon termination or expiration of this Agreement, each party must, within five (5) Business Days from the date of termination, return to the other

party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control. If Supplier or MSU determine that the return of any Confidential Information is not feasible, such party must destroy the Confidential Information and certify the same in writing within five (5) Business Days from the date of termination to the other party.

8. AUDIT AND RETENTION OF BOOKS AND RECORDS

University shall have access to and the right to examine and copy any directly pertinent books, documents, papers, and records of Supplier involving transactions related to this Agreement until the expiration of three (3) years after final payment hereunder. Supplier further agrees to promptly furnish, when requested by University, such books, documents, and records of Supplier as are necessary to verify the accuracy of the amounts invoiced to University against any past or current Software and Services provided by Supplier. If any audit discloses an overpayment by University or a discrepancy in the amount invoiced by Supplier against the Software and Services actually provided by Supplier, Supplier will promptly reimburse University within thirty (30) days of University's notification to Supplier of any such overpayment, rectify such discrepancy, or both, and further pay University a fee equal to 25% of the amount of any overpayment.

9. REPRESENTATIONS AND WARRANTIES

9.1 Supplier represents and warrants to MSU that:

- (a) Supplier has the right to enter into this Agreement, to grant the rights granted herein and to perform fully all of its obligations in this Agreement;
- (b) Supplier's entering into this Agreement with MSU and its performance of the Services do not and will not conflict with or result in any breach or default under any other agreement to which it is subject;
- (c) Supplier has the required skill, experience and qualifications to perform the Services, Supplier shall perform the Services in a professional and workmanlike manner in accordance with best industry standards for similar services and Supplier shall devote sufficient resources to ensure that the Services are performed in a timely and reliable manner;
- (d) Supplier shall perform the Services in compliance with all applicable federal, state and local laws and regulations;

9.2 MSU hereby represents and warrants to Supplier that:

- (a) it has the full right, power and authority to enter into this Agreement and to perform its obligations hereunder; and
- (b) the execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary organizational action.

10. INDEMNIFICATION

10.1 Supplier shall defend, indemnify and hold harmless MSU and its affiliates and their trustees, officers, directors, employees, agents, successors and permitted assigns from and against all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind (including reasonable attorneys' fees) arising out of or resulting from:

- (a) bodily injury, death of any person or damage to real or tangible, personal property resulting from Supplier's acts or omissions;
- (b) Supplier's breach of any representation, warranty or obligation under this Agreement; and
- (c) any claim that the Software or Services, or University resale of the Software, infringe any other person's or entities' intellectual property rights.

10.2 MSU may satisfy such indemnity (in whole or in part) by way of deduction from any payment due to Supplier.

11. INSURANCE

11.1 While performing services under this Agreement, Supplier shall purchase and maintain the following insurance:

- (a) Workers Compensation insurance, Coverage A, with limits statutorily required by any applicable Federal or state law and Employers Liability insurance, Coverage B, with minimum limit of \$500,000 per accident;
- (b) Commercial General Liability insurance with a minimum limit of \$1,000,000 each occurrence/\$2,000,000 general aggregate. Coverage shall include bodily injury and property damage liability, personal and advertising injury liability, products/completed operations, and liability assumed under an insured contract;
- (c) Automobile Liability Insurance covering owned, hired, leased, and non-owned automobiles used on behalf of Supplier and providing insurance for bodily injury, property damage, and contractual liability. Limits of liability shall not be less than \$1,000,000 per occurrence;
- (d) Professional Liability insurance for claims arising from negligent acts, errors or omissions by anyone providing professional services including but not limited to doctors, lawyers, architects, engineers, designers, appraisers and consultants. Minimum limit is \$1,000,000 per claim and \$3,000,000 annual aggregate; and
- (e) For services that may impact the security of the University's electronic data, or Suppliers that store, process, handle or transmit University data in electronic format, Cyber Liability Insurance coverage with limits no less than \$1 million.

11.2 Insurance policies shall be issued by companies licensed or approved to do business within the State of Michigan. Insurers shall possess a minimum A.M. Best rating of A. The insurance policies, except Workers' Compensation and Professional Liability shall be endorsed to name Michigan State University, its Board of Trustees, agents, officers, employees, and volunteers as "Additional Insureds." In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend for three

years past completion and acceptance of Supplier's Services and must be evidenced by annual certificates of insurance. All policies of insurance must be on a primary basis, non-contributory with any other insurance and/or self-insurance carried by MSU. Prior to commencing services Supplier shall furnish the University with certificates of insurance. Supplier shall provide a minimum 30 days written notice to MSU via certified mail of cancellation or non-renewal of policies required under this Agreement and a renewal certificate at least 15 days prior to expiration.

12. TERMINATION

- 12.1 MSU may terminate this Agreement without cause upon thirty (30) days' written notice to Supplier. In the event of termination pursuant to this paragraph 12.1, MSU shall pay Supplier any fees due and payable for any Software delivered or Services completed up to and including the date of such termination.
- 12.2 MSU may terminate this Agreement, effective upon written notice to Supplier, in the event that Supplier materially breaches this Agreement, and such breach is incapable of cure, or with respect to a material breach capable of cure, Supplier does not cure such breach within fifteen (15) days after receipt of written notice of such breach. MSU shall pay Supplier any fees due and payable for any Software delivered and accepted or any Services completed up to and including the date of such termination, subject to MSU's right of offset for reasonable costs incurred by MSU as a result terminating the Agreement.
- 12.3 Upon expiration or termination of this Agreement for any reason, or at any other time upon MSU's written request, Supplier shall within fifteen (15) days after such expiration or termination:
 - (a) deliver to MSU all paid-for Software;
 - (b) deliver to MSU any tools, equipment or other materials provided for Supplier's use by MSU;
 - (c) deliver to MSU all tangible documents and materials (and any copies) containing, reflecting, incorporating or based on the Confidential Information;
 - (d) take all reasonable and necessary measures to transition performance of the Services, reports and other documentation, to MSU or MSU's designee;
 - (e) prepare an accurate accounting from which MSU and Supplier may reconcile all outstanding accounts;
 - (f) permanently erase all of the Confidential Information from Supplier's computer systems; and
 - (g) certify in writing to MSU that Supplier has complied with the requirements of this paragraph.

13. ASSIGNMENT

Supplier shall not assign any rights, or delegate or subcontract any obligations, under this Agreement without MSU's prior written consent. Any assignment in violation of the foregoing shall be deemed null and void. MSU may freely assign its rights and obligations under this Agreement at any time. Subject to the limits on assignment stated above, this Agreement will inure to the benefit of, be binding upon, and be enforceable against, each of the parties hereto and their respective successors and assigns.

14. USE OF THE UNIVERSITY NAME, LOGO AND MARKS

The University acknowledges that Supplier may make public statements regarding the existence of this Agreement, its terms and conditions and an accurate description of the products or services being supplied without the consent of the University. However, other than as permitted by the previous sentence, Supplier will not use the name, logo, or any other marks (including, but not limited to, colors and music) owned by or associated with the University, or the name of any representative of the University without the prior written permission of the University in each instance. Supplier may not imply, directly or indirectly, that MSU endorses any products or services supplied to MSU.

15. LIMITATION OF LIABILITY

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, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS AND LOST BUSINESS OPPORTUNITIES. OTHER THAN ITS PAYMENT OBLIGATIONS, IN NO EVENT WILL MSU'S AGGREGATE LIABILITY TO SUPPLIER UNDER THIS AGREEMENT, 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 AGREEMENT, EXCEED THE TOTAL AMOUNT OF PAYMENTS PAID BY MSU TO SUPPLIER DURING THE TWELVE (12) MONTHS PRECEDING THE APPLICABLE CLAIM.

16. NON-DISCRIMINATION UNDER MICHIGAN LAW

Pursuant to Section 209 of the Michigan Elliot-Larsen Civil Rights Act and Section 209 of the Michigan Persons with Disabilities Civil Rights Act, in providing services, the Supplier and its contractor(s) agree not to discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of age, color, familial status, height, marital status, national origin, race, religion, sex, sexual orientation, gender identity or expression, weight, disability or genetic information that is unrelated to the individual's ability to perform the duties of a particular job or position.

17. EXCLUSION AND DEBARMENT

Supplier certifies that it is not presently debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded or otherwise ineligible for state or Federal program participation. In the event that Supplier becomes debarred, suspended or ineligible from state or Federal program participation, Supplier shall notify MSU in writing within three (3) business days of such event, in which case MSU may terminate this Agreement for cause. To the extent that Supplier will provide services to any MSU medical entity, Supplier hereby represents and warrants that Supplier is not currently, and at no time has been sanctioned, debarred, suspended, or excluded by any state or federally funded healthcare program, including without limitation, Medicare and Medicaid. Supplier agrees to immediately notify MSU of any threatened,

proposed, or actual sanctions, debarment action, suspension, or exclusion by or from any state or federally funded health care program during the term of this Agreement.

18. FEDERAL CONTRACT COMPLIANCE.

18.1 **University is an equal opportunity employer and a federal contractor or subcontractor. Consequently, the parties agree that, as applicable, they will abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a) and that these laws are incorporated herein by reference. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. These regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to veteran status or disability. The parties also agree that, as applicable, they will abide by the requirements of 29 CFR Part 471, Appendix A to Subpart A, relating to the notice of employee rights under federal labor laws.**

18.2 In accordance with (i) Public Law 115-91 and FAR 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities, (ii) Public Law 115-232 and FAR 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment, and (iii) FAR 52.204-30, Federal Acquisition Supply Chain Security Act (FASCSA) Orders Prohibition, Supplier is prohibited from delivering covered telecommunications equipment as defined in FAR 52.204-25, covered articles as defined in FAR 52.204-23, or covered articles as defined under FAR 52.204-30 and identified pursuant to an FASCSA order. Supplier hereby represents and warrants that it will abide by the prohibitions contained in this Section.

18.3 Supplier declares that all Software purchased under the Agreement are neither subject to the International Traffic in Arms Regulations (ITAR) nor any of the Export Administration Regulations (EAR) Export Control Classification Numbers (ECCN's) in the 500 or 600 series as listed on the Commerce Control List (CCL). If any Software are subject to ITAR or EAR ECCN's in the 500 or 600 series, Supplier shall notify University's Office of Export Control & Trade Sanctions (export@msu.edu) prior to shipment of the Materials. For the avoidance of doubt, unless Supplier has provided advance notice to University's Office of Export Control and Trade Sanctions, Supplier declares and warrants that (i) the Software are not listed on the ITAR United States Munitions List (USML); and (ii) the Software are not listed on the EAR CCL in ECCN's in the 500 or 600 series. Supplier declares that it fully understands that sourcing any Software classified in any of the above categories could have material adverse implications and require extensive management for the University, and therefore Supplier agrees to defend, indemnify and hold harmless the University for any costs or liability related to Supplier's violation of this Section.

19. COMPLIANCE WITH LAWS

Supplier shall comply with all applicable laws, regulations and ordinances and the University's policies and rules, found at <https://upl.msu.edu/procurement/supplier-resources/policies-for-suppliers/index.html>. Supplier has and shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement.

20. CRIMINAL BACKGROUND CHECKS

Supplier may be required to perform criminal background checks of its personnel pursuant to the MSU Contractor Criminal Background Check Requirements Policy (“**CBC Policy**”), available at <https://upl.msu.edu/common/documents/criminal-back-ground-check.pdf>. If Supplier is subject to the CBC Policy, Supplier must sign and deliver the Contractor Certification for Criminal Background Checks to University prior to the provision of any services or delivery of any Software. University reserves the right to audit compliance with the CBC Policy requirements and may require further documentation of compliance from Supplier. Non-compliance with the Policy is considered a material breach of this Agreement, which may result in a termination for cause

21. CONFLICT OF INTEREST.

Supplier warrants that to the best of Supplier’s knowledge, there exists no actual or potential conflict between Supplier and the University, and its Services under this Agreement, and in the event of change in either Supplier’s private interests or Services under this Agreement, Supplier will inform the University regarding possible conflict of interest which may arise as a result of the change. Supplier also affirms that, to the best of Supplier’s knowledge, there exists no actual or potential conflict between a University employee and Supplier.

22. MISCELLANEOUS

- 22.1 All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a “**Notice**”) shall be in writing and addressed to the parties at the addresses set forth on the first page of this Agreement (or to such other address that may be designated by the receiving party from time to time in accordance with this section). All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile or e-mail (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only if (a) the receiving party has received the Notice and (b) the party giving the Notice has complied with the requirements of this Section.
- 22.2 Neither Supplier nor MSU shall be liable for failure to perform its respective obligations under the Agreement when failure is caused by fire, explosion, flood, act of God, epidemics or pandemics, civil disorder or disturbances, strikes, vandalism, war, riot, sabotage, weather and energy related closings, or like causes beyond the reasonable control of the party (“**Force Majeure Event**”). In the event that either party ceases to perform its obligations under this Agreement due to the occurrence of a Force Majeure Event, the party shall: (a) as soon as practicable notify the other party in writing of the Force Majeure Event and its expected duration; (b) take all reasonable steps to recommence performance of its obligations under this Agreement as soon as possible, including, as applicable, abiding by the disaster plan in place for MSU. In the event that any Force Majeure Event delays a party’s performance for more than thirty (30) calendar days following notice by the delaying party pursuant to this Agreement, the other party may terminate this Agreement immediately upon written notice
- 22.3 This Agreement, together with any other documents incorporated herein by reference and related Exhibits and Schedules, constitutes the sole and entire agreement of the parties to this Agreement with respect to

the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter. NO TERMS ON SUPPLIER'S INVOICES, WEBSITE, BROWSE-WRAP, SHRINK-WRAP, CLICK-WRAP OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS PROVIDED WITH ANY OF THE SERVICES HEREUNDER WILL CONSTITUTE A PART OR AMENDMENT OF THIS AGREEMENT OR IS BINDING ON MSU FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY MSU, EVEN IF ACCESS TO OR USE OF SUCH SERVICES REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.

- 22.4 This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto, and any of the terms thereof may be waived, only by a written document signed by each party to this Agreement or, in the case of waiver, by the party or parties waiving compliance.
- 22.5 This Agreement shall be governed by and construed in accordance with the internal laws of the State of Michigan without giving effect to any choice or conflict of law provision or rule. Each party irrevocably submits to the exclusive jurisdiction and venue of the federal and state courts located in Ingham County in the State of Michigan in any legal suit, action or proceeding arising out of or based upon this Agreement or the Services provided hereunder.
- 22.6 If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
- 22.7 This Agreement may be executed in multiple counterparts and by electronic signature, each of which shall be deemed an original and all of which together shall constitute one instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

MICHIGAN STATE UNIVERSITY

Signature: _____

Print Name: _____

Title: _____

Date: _____

[Name of Supplier]

Signature: _____

Print Name: _____

Title: _____

Date: _____