

**STATE OF MICHIGAN
 DEPARTMENT OF MANAGEMENT AND BUDGET
 PURCHASING OPERATIONS
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48933**

April 9, 2009

**CHANGE NOTICE NO. 4
 TO
 CONTRACT NO. 071B4200213
 between
 THE STATE OF MICHIGAN
 and**

NAME & ADDRESS OF VENDOR Professional Technical Development 3001 Coolidge Suite 403 East Lansing, MI 48823 Karl.Meier@ptdtech.com	TELEPHONE Karl A. Meier (517) 333-9363
	VENDOR NUMBER/MAIL CODE
	BUYER (517) 373-3993 Dale N. Reif
Contract Administrator: Don Stevens Desktop and Professional Technical Training Contract	
CONTRACT PERIOD: From: April 8, 2004 To: May 8, 2009	
TERMS Net 45 Days	SHIPMENT 30 Days ARO
F.O.B. Delivered	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A	

THIS CONTRACT IS EXTENDED TO ALL LOCAL UNITS OF GOVERNMENT

NATURE OF CHANGE(S):

Effective immediately, this contract is hereby EXTENDED one month to May 8, 2009. All other terms and conditions remain the same.

AUTHORITY/REASON(S):

Per agency and vendor agreement and Administrative Board Approval on 4/7/09.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$6,271,203.00

March 31, 2009

Mr. Steve Motz
Buyer, IT Division
Purchasing Operations
Department of Management and Budget

RE: Michigan Master Information Technology Training Contract (MMITT) Number 071B4200213

Dear Mr. Motz,

It has been requested that PTD Technology extend the above referenced contract for a period of one month so that the State of Michigan has ample time to complete the processes necessary to finalize a new contract for training services.

We at PTD Technology agree to the extension, and appreciate the opportunity to continue to be of service to the State of Michigan. If you need anything else to complete this extension, please call and we will respond immediately.

Sincerely,

Karl Meier
President
PTD Technology
3001 Coolidge Rd., Suite 403
East Lansing, MI 48823
(517) 333-9363 Ext. 118
Karl.Meier@PTDtechnology.com

STATE OF MICHIGAN
DEPARTMENT OF MANAGEMENT AND BUDGET
PURCHASING OPERATIONS
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

June 19, 2008

CHANGE NOTICE NO. 3
TO
CONTRACT NO. 071B4200213
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR Professional Technical Development 3001 Coolidge Suite 403 East Lansing, MI 48823 Karl.Meier@ptdtech.com	TELEPHONE Karl A. Meier (517) 333-9363
	VENDOR NUMBER/MAIL CODE
	BUYER (517) 373-3993 Dale N. Reif
Contract Administrator: Don Stevens Desktop and Professional Technical Training Contract	
CONTRACT PERIOD: From: April 8, 2004 To: April 8, 2009	
TERMS Net 45 Days	SHIPMENT 30 Days ARO
F.O.B. Delivered	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A	

THIS CONTRACT IS EXTENDED TO ALL LOCAL UNITS OF GOVERNMENT

NATURE OF CHANGE(S):

Effective immediately, this contract is hereby INCREASED by \$3,000,000.00. All other terms and conditions remain the same.

AUTHORITY/REASON(S):

Per agency and vendor agreement.

INCREASE: \$3,000,000.00

TOTAL REVISED ESTIMATED CONTRACT VALUE: \$6,271,203.00

STATE OF MICHIGAN
DEPARTMENT OF MANAGEMENT AND BUDGET
PURCHASING OPERATIONS
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

February 19, 2008

CHANGE NOTICE NO. 2
TO
CONTRACT NO. 071B4200213
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR Professional Technical Development 3001 Coolidge Suite 403 East Lansing, MI 48823 Karl.Meier@ptdtech.com	TELEPHONE Karl A. Meier (517) 333-9363
	VENDOR NUMBER/MAIL CODE
	BUYER (517) 373-3993 Dale N. Reif
Contract Administrator: Don Stevens Desktop and Professional Technical Training Contract	
CONTRACT PERIOD: From: April 8, 2004 To: April 8, 2009	
TERMS Net 45 Days	SHIPMENT 30 Days ARO
F.O.B. Delivered	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A	

THIS CONTRACT IS EXTENDED TO ALL LOCAL UNITS OF GOVERNMENT

NATURE OF CHANGE(S):

Effective April 9, 2008, this contract is hereby EXTENDED to April 8, 2009. All other terms and conditions remain the same.

AUTHORITY/REASON(S):

Per agency and vendor agreement.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$3,271,203.00

STATE OF MICHIGAN
DEPARTMENT OF MANAGEMENT AND BUDGET
PURCHASING OPERATIONS
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

March 6, 2007

CHANGE NOTICE NO. 1
TO
CONTRACT NO. 071B4200213
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR Professional Technical Development 3001 Coolidge Suite 403 East Lansing, MI 48823	TELEPHONE Karl A. Meier (517) 333-9363
	VENDOR NUMBER/MAIL CODE
	BUYER (517) 373-3993 Dale N. Reif
Contract Administrator: Don Stevens Desktop and Professional Technical Training Contract	
CONTRACT PERIOD: From: April 8, 2004 To: April 8, 2008	
TERMS Net 45 Days	SHIPMENT 30 Days ARO
F.O.B. Delivered	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A	

THIS CONTRACT IS EXTENDED TO ALL LOCAL UNITS OF GOVERNMENT

NATURE OF CHANGE(S):

Effective April 8, 2007, this contract is hereby EXTENDED to April 8, 2008. Please note that the buyer has been changed to Dale Reif. All other terms and conditions remain the same.

AUTHORITY/REASON(S):

Per letter from vendor dated 2/26/07 and agency agreement.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$3,271,203.00

STATE OF MICHIGAN
DEPARTMENT OF MANAGEMENT AND BUDGET
ACQUISITION SERVICES
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

April 15, 2004

NOTICE
TO
CONTRACT NO. 071B4200213
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR Professional Technical Development 3001 Coolidge Suite 403 East Lansing, MI 48823	TELEPHONE Karl A. Meier (517) 333-9363
	VENDOR NUMBER/MAIL CODE
	BUYER (517) 241-1218 Greg Faremouth, CPPB
Contract Administrator: Don Stevens Desktop and Professional Technical Training Contract	
CONTRACT PERIOD: From: April 8, 2004 To: April 8, 2007	
TERMS Net 45 Days	SHIPMENT 30 Days ARO
F.O.B. Delivered	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A	

THIS CONTRACT IS EXTENDED TO ALL LOCAL UNITS OF GOVERNMENT

The terms and conditions of this Contract are enclosed.

Estimated Contract Value: **\$3,271,203.00**

STATE OF MICHIGAN
DEPARTMENT OF MANAGEMENT AND BUDGET
ACQUISITION SERVICES
P.O. BOX 30026, LANSING, MI 48909
 OR
530 W. ALLEGAN, LANSING, MI 48933

CONTRACT NO. 071B4200213
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR Professional Technical Development 3001 Coolidge Suite 403 East Lansing, MI 48823	TELEPHONE Karl A. Meier (517) 333-9363 VENDOR NUMBER/MAIL CODE BUYER (517) 241-1218 Greg Faremouth, CPPB
Contract Administrator: Don Stevens Desktop and Professional Technical Training Contract	
CONTRACT PERIOD: From: April 8, 2004 To: April 8, 2007	
TERMS Net 45 Days	SHIPMENT 30 Days ARO
F.O.B. Delivered	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A	
MISCELLANEOUS INFORMATION: The terms and conditions of this Contract are enclosed. Estimated Contract Value: \$3,271,203.00	

FOR THE VENDOR: Professional Technical Development _____ Firm Name _____ Authorized Agent Signature _____ Authorized Agent (Print or Type) _____ Date	FOR THE STATE: _____ Signature Sean Carlson, Director _____ Name Acquisition Services _____ Title _____ Date
--	---

Michigan Master Information Technology Training Contract

For Desktop and Technical Training



Michigan Master Information Technology Training Contract

Desktop and Professional Technical Training Contract

For the State Of Michigan

Michigan Master Information Technology Training Contract
For Desktop and Technical Training

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Michigan Master Information Technology Training Contract

For Desktop and Technical Training

INTRODUCTION

In 1995 the State of Michigan entered into a Master Contract that provided hardware, software, training and services for End User Computing (EUC). This single Contract was established to replace numerous smaller and similar contracts thus allowing the State to take advantage of its enterprise buying power and reduce the administrative costs of maintaining numerous contracts. A separate Network Contract was concurrently in place focusing on purchases of network hardware, software, training and services. In 1998 the Network Contract expired and the network items were incorporated into the EUC Contract, thereafter referred to as the EUCN Contract. EDS was awarded the EUCN Contract, which expired February 8, 2004.

Significant changes occurred during the evolution to the EUCN Contract. A web catalog was instituted in January 1998 followed by a major revision in June 1999 to make the site e-commerce ready. In 2003, the State published a Request For Proposal (RFP) intended to cover the majority of information technology services then under the EUCN Contract. The RFP resulted in a program called Master Vendor Program (MVP) and shifting IT services to the MVP coincided with the changing environment and structure of the State of Michigan.

A second RFP issued 2003, referred to as the Michigan Master Computing Contract (MMCC), focused on the purchase of commodities, including training. A major goal of the MMCC RFP was to provide reliable technical training to Department of Information Technology (DIT) technology staff and to DIT clients. Delivery had to be in the most cost-effective manner and under terms in the best interests of the State and its citizens. Additional goals were to position the State as the anchor tenant to facilitate better pricing to Extended Purchasing members, to take advantage of current trends toward e-Learning, and to provide employee training history data to the state's Human Resources system. Contracts incident to the MMCC RFP are mandatory use contracts for all State agencies and are administered by DIT.

In December 2003, the MMCC Joint Evaluation Committee completed the evaluation of the responses to the MMCC RFP and decided to award two contracts. The three non-training sections of the RFP were awarded to EDS: The section on training developed into the Michigan Master Information Technology Training (MMITT) Contract and was awarded to PTD, Inc.

Michigan Master Information Technology Training Contract
For Desktop and Technical Training

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For Desktop and Technical Training

DOCUMENT ARRANGEMENT

The Table of Contents is displayed in the next several pages. These four sections immediately follow the Table of Contents.

SECTION I, TERMS AND CONDITIONS.

This Section explains the legal terms and conditions as contractually agreed upon.

SECTION II, STATEMENT OF WORK.

This Section details the technical training, both desktop and professional, to be provided under this Contract. Common goals and objectives are supplied throughout this Section and, where applicable, background information is presented.

SECTION III, APPENDIX.

This Section describes the various service level metrics and the negotiated pricing that resulted from the award of the Contract.

SECTION IV, DEFINITION OF TERMS.

This Section is a glossary of terms and abbreviations used throughout this Contract.

Michigan Master Information Technology Training Contract
For Desktop and Technical Training

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For Desktop and Technical Training

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Michigan Master Information Technology Training Contract

For Desktop and Technical Training

SECTION I TERMS AND CONDITIONS

1. RESERVED

2. CONTRACT STRUCTURE AND ADMINISTRATION

2.1 APPENDICES

All Appendices attached to this Contract are incorporated in their entirety into, and form part of, the resulting Contract(s).

2.2 STATEMENTS OF WORK

(a) The parties agree that any Services to be rendered by Contractor(s) pursuant to this Contract (and any future amendments of it) will be defined and described in detail in separate Statements of Work executed under this Contract(s). Contractor(s) shall not be obliged or authorized to commence any work to implement a Statement of Work until both parties sign it. Contractor(s) shall perform the Services in accordance with the ensuing resulting Contract(s), including the Statements of Work executed under it.

(b) Unless otherwise agreed by the parties, each Statement of Work will include, or incorporate by reference to the appropriate Contract(s) Exhibit containing, the following information:

- A description of the Services to be performed by Contractor under the Statement of Work;
- A project schedule (including the commencement and completion dates for all tasks, subtasks and Deliverables);
- A list of the Deliverables to be provided, if any, including any particular specifications and acceptance criteria for such Deliverables, and the dates on which the Deliverables are scheduled to be completed and delivered to the State;
- All Deliverable prices and other charges associated with the Statement of Work, the overall fixed price for such Statement of Work and any other appropriate pricing and payment terms;
- A specification of Contractor's and the State's respective performance responsibilities with respect to the performance or completion of all tasks, subtasks and Deliverables;
- A listing of any Key Personnel of Contractor and/or its Subcontractors for that Statement of Work and any future Statements of Work.
- Any other information or provisions the parties agree to include.

(c) Reserved.

(d) Reserved.

Michigan Master Information Technology Training Contract

For Desktop and Technical Training

2.3 ISSUING OFFICE

This Contract is issued by the State of Michigan DMB, Office of Acquisition Services (“Office of Acquisition Services”) and DIT (collectively, including all other relevant State of Michigan departments and agencies, the “State”). The Office of Acquisition Services is the sole point of contact in the State with regard to all Contractual matters relating to the Services described. **The Office of Acquisition Services is the only State office authorized to change, modify, negotiate, amend, alter or clarify the prices, specifications, terms and conditions of any ensuing Contract(s).** The Contract Administrator within the Office of Acquisition Services for this Contract(s) is:

Greg Faremouth, Buyer Specialist
Office of Acquisition Services
Department of Management and Budget
Mason Bldg, 2nd Floor
PO Box 30026
Lansing, MI 48909
faremouthg@michigan.gov
(517) 241-1646

2.4 CONTRACT COMPLIANCE INSPECTOR

Upon receipt at the Office of Acquisition Services of the properly executed Contract(s), it is anticipated that the Director of Acquisition Services, DMB will direct that the person named below, or any other person so designated, be authorized to administer the Contract(s) on a day-to-day basis during its term. However, administration of any resulting Contract(s) implies no authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions and specifications of such Contract(s). The Office of Acquisition Services retains that authority. The Contract Compliance Inspector for this Contract(s) is:

Don Stevens, Director
Department of Information Technology
105 West Allegan
Landmark Building
Lansing, Michigan 48933
stevensd@michigan.gov

2.5 REFERENCE TO DAYS

All references in this Contract to days shall be Business days unless otherwise specified.

Michigan Master Information Technology Training Contract

For Desktop and Technical Training

2.6 ORDERING

- (a) Reserved
- (b) Any services to be furnished under this Contract(s) shall be ordered by issuance of written Purchase Orders/Blanket Purchase Order by the State after approval by the Contract(s) Administrator or his/her designee. Such orders may be issued from the Effective Date through three years and any subsequent renewals. All orders are subject to the terms and conditions of any ensuing Contract(s). In the event of conflict between an order and the ensuing Contract(s), the Contract(s) shall take precedence as stated in **Section 25.3**. In no event shall any additional terms and conditions contained on a Purchase Order/Blanket Purchase Order be applicable, unless specifically contained in that Purchase Order/Blanket Purchase Order's accompanying Statement of Work.
- (c) Contractor and the State will work to develop an electronic ordering process, which may include an interactive website.
- (d) DIT will continue to oversee the use of this Contract(s) by Information technology clients. DIT may, in writing, delegate to agencies the authority to submit requests for certain products/services directly to the Contractor(s). DIT may also designate, in writing, some services as non-delegated and require DIT review and approval before agency acquisition. DIT will use Contractor(s) provided management reports and periodic random agency audits to monitor and administer any resulting Contract(s) usage for delegated services.

3. RESERVED

4. LEGAL EFFECT AND TERM

4.1 LEGAL EFFECT

Except as otherwise agreed in writing by the parties, the State assumes no liability for costs incurred by Contractor or payment under any ensuing Contract until Contractor is notified in writing that the Contract has been approved by the State Administrative Board and the Michigan Department of Attorney General, and signed by all the parties. The total liability of the State under any Contract is limited in accordance with the terms and conditions of any ensuing Contract.

4.2 CONTRACT TERM

The Contract will be for a period of three (3) years commencing on Execution Date. The Contract may be renewed for up to two (2) additional one (1) year periods. The Contract may be renewed in writing by mutual agreement of the parties' not less than forty (40)-business days before its expiration.

4.3 SEVERABILITY

Each provision of the Contract shall be deemed to be severable from all other provisions of the Contract and, if one or more of the provisions of the Contract shall be declared invalid, the remaining provisions of the Contract shall remain in full force and effect. If the removal of an invalid provision would strike at the heart of the Contract, then the parties will negotiate in good

Michigan Master Information Technology Training Contract

For Desktop and Technical Training

faith to substitute for such invalid provision a mutually acceptable provision consistent with the original intention of the parties.

4.4 RELATIONSHIP OF THE PARTIES

The relationship between the State and the Contractor is that of client and independent Contractor. No agent, employee, or servant of the Contractor, nor any of its subcontractors, shall be deemed to be an employee, agent, or servant of the State for any reason. The Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants and subcontractors during the performance of the Contract.

Each party will be responsible for the management, direction and control of its employees and such employees will not be employees of the other party. Accordingly, each party will be responsible for all federal, state, and local taxes and assessments related to its employees, such as taxes associated with social security, unemployment compensation, and workers' compensation.

5. CONTRACTOR PERSONNEL AND THIRD PARTIES

5.1 CONTRACTOR PERSONNEL

(a) Personnel Qualifications. All persons assigned by Contractor to perform under the Contract shall be employees of Contractor or its majority-owned (directly or indirectly, at any tier) subsidiaries (or a State-approved Subcontractor) and shall be fully qualified to perform the work assigned to them. Contractor shall include a similar provision in any subcontract entered into with a Subcontractor. For the purposes of the Contract, independent Contractors engaged by Contractor solely in a staff augmentation role shall be treated by the State as if they were employees of Contractor for the Contract only; however, the State understands that the relationship between Contractor and Subcontractor is an independent Contractor relationship.

(b) Key Personnel.

(i) In discharging its obligations under the Contract, Contractor shall provide the named Key Personnel on the terms indicated. The State and the Contractor agree that the following positions (and individuals) are Key Personnel for purposes of this Contract:

- Karl Meier, Full-time Project Manager
- Corey Milnes, Regional Area Manager, KnowledgeNet

(ii) Key Personnel shall be dedicated to the Project for its duration in the applicable Statement of Work with respect to other individuals designated as Key Personnel for that Statement of Work.

(iii) The State will have 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, will introduce the individual to the appropriate State representatives, and will provide the State with a resume and any other information about the individual reasonably requested by the State. The State

Michigan Master Information Technology Training Contract

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reserves the right to interview the individual before granting written approval. The State reserves the right to direct the Contractor to remove Contractor personnel at any time during the Contract, the State's request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good faith reasons. Replacement personnel for the removed person shall be fully qualified for the position.

- (iv) Contractor shall not remove any Key Personnel from their assigned role or the Contract without the prior written consent of the State. If the Contractor does remove Key Personnel without the prior written consent of the State, it shall be considered an unauthorized removal ("Unauthorized Removal"). It shall not be considered an Unauthorized Removal if Key Personnel must be replaced 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. The Contractor with the State shall review any Key Personnel replacements, and establish appropriate transition planning. Any Unauthorized Removal may be considered by the State to be a material breach of the Contract, in respect of which the State may elect to exercise its rights under **Section 19.1**.
- (c) Re-assignment of non-Key Personnel. Prior to re-deploying to other projects, at the completion of their assigned tasks on the Project, teams of its non-Key Personnel who are performing services on-site at State facilities or who are otherwise dedicated primarily to the Project, Contractor will give the State at least ten (10) business days notice of the proposed re-deployment to give the State an opportunity to object to the re-deployment if the State reasonably believes such team's Contract responsibilities are not likely to be completed and approved by the State prior to the proposed date of re-deployment.
- (d) Re-assignment of Personnel at the State's Request. The State reserves the right to require the removal of personnel found, in the judgment of the State, to be unacceptable. The State's request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good faith reasons. Replacement personnel for the removed person shall be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with removed personnel results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected work will not be counted in **Section 7.6** for a time as agreed to by the parties.
- (e) Staffing Levels.
 - (i) All staff requirements not specified in the applicable Statement of Work or State-approved project plan as State personnel will be supplied by Contractor. This includes secretarial, clerical and contract administration support staff necessary for Contractor to perform its obligations hereunder.
 - (ii) Contractor shall provide sufficient personnel resources for the completion of Contract tasks indicated in Contractor's project plan approved by the State. If the level of personnel resources is insufficient to complete any Contractor Contract tasks in

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accordance with the Contract time schedule as demonstrated by Contractor's failure to meet mutually agreed to time schedules, Contractor shall promptly add additional qualified personnel resources to the performance of the affected tasks, at no additional charge to the State, in an amount sufficient to complete performance of Contractor's tasks in accordance with the Contract time schedule.

- (f) Personnel Turnover. The Parties agree that it is in their best interests to keep the turnover rate of employees of Contractor and its Subcontractors who are performing the services to a reasonable minimum. Accordingly, if the State determines that the turnover rate of such employees is excessive and so notifies Contractor, Contractor will meet with the State to discuss the reasons for the turnover rate and otherwise use commercially reasonable efforts to minimize such turnover rate. If requested to do so by the State, Contractor will submit to the State its proposals for reducing the turnover rate to an acceptable level. In any event, notwithstanding the turnover of personnel, Contractor remains obligated to perform the services without degradation and in accordance with the State-approved Contract schedule.
- (g) Location. All staff assigned by Contractor to work on the Contract will perform their duties either primarily at Contractor's offices and facilities or at State facilities.
- (h) Personnel

If the Statement of Work includes personnel, before assigning any person to work on a Statement of Work issued under the Contract, the Contractor shall submit a resume for that individual attesting that the person meets the stated qualifications and the individual must pass the State's security background checks before the individual can report to the work site or work with State information. ANY additions or changes to the personnel once the Statement of Work has been approved or is in process must also pass the State's security background checks before the individual can report to the work site or work with State information.

DIT may require the Contractor to include among the personnel to be assigned to perform under Statement of Work individuals designated as key personnel. Key personnel are defined as; personnel identified in the Statement of Work as key individuals to be assigned for participation in the performance of the Statement of Work. These personnel will be clearly identified within the Statement of Work. The personnel so identified should be considered essential to the work. Prior to directing any of the key personnel to other programs or assigning duties not directly related to the Statement of Work, the Contractor shall provide advanced written notification of at least twenty (20) business days to DIT and shall submit justification in sufficient detail to permit evaluation of the impact of the proposed changes on the Statement of Work or its schedule. The Contractor without the written consent of DIT shall make no deviation. Key personnel shall be committed for the full duration of the Statement of Work. The Contractor must demonstrate that the qualifications of the proposed substitutes are equal to or better than the qualifications of the personnel being replaced.

5.2 CONTRACTOR IDENTIFICATION

Contractor employees shall be clearly identifiable while on State property by wearing a State-issued badge, as required. Contractor employees are required to clearly identify themselves and

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the company they work for whenever making contact with State personnel by telephone or other means.

5.3 COOPERATION WITH THIRD PARTIES

Contractor agrees to cause its personnel and the personnel of any Subcontractors to cooperate with the State and its agents and other Contractors including the State's Quality Assurance personnel, and, as reasonably requested by the State, to provide to the State's agents and other Contractors with reasonable access to Contractor's Project personnel, systems and facilities to the extent they relate to activities specifically associated with the Contract and will not interfere or jeopardize the safety or operation of the systems or facilities and provided Contractor receives reasonable prior written notice of such request. The State acknowledges that Contractor's time schedule for the Contract is very specific and agrees not to unnecessarily or unreasonably interfere with, delay or otherwise impeded Contractor's performance under the Contract with such requests for access.

5.4 SUBCONTRACTING BY CONTRACTOR

- (a) Contractor shall have full responsibility for the successful performance and completion of all of the services. The State will consider Contractor to be the sole point of contact with regard to all Contractual matters under the Contract, including payment of any and all charges for services.
- (b) Contractor shall not delegate any duties under the Contract to a Subcontractor unless the Office of Acquisition Services has given written consent to such delegation. The State shall have the right of prior written approval of all Subcontractors and to require Contractor to replace any Subcontractors found, in the reasonable judgment of the State, to be unacceptable. The State's request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good faith reasons. Replacement Subcontractor for the removed Subcontractor shall be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed Subcontractor, the State will agree to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with a removed Subcontractor results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected work will not be counted in **Section 7.6** for a time agreed upon by the parties. In any subcontracts entered into by Contractor for the performance of the services, Contractor shall require the Subcontractor, to the extent of the services to be performed by the Subcontractor, to be bound to Contractor by the terms of the Contract and to assume toward Contractor all of the obligations and responsibilities that Contractor, by the Contract, assumes toward the State. The State reserves the right to receive copies of and review all subcontracts, although Contractor may delete or mask any proprietary information, including pricing contained in such Contracts prior to providing them to the State. The management of any Subcontractor will be the responsibility of Contractor, and Contractor shall remain responsible for the performance of its Subcontractors to the same extent as if Contractor had not subcontracted such performance. Contractor shall make all payments to Subcontractors or suppliers of Contractor. Except as otherwise agreed in writing by the State and Contractor, the State will not be obligated to direct payments for the services other than to Contractor. The State's written approval of any Subcontractor engaged by Contractor to

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perform any obligation under the Contract shall not relieve Contractor of any obligations or performance required under the Contract.

- (c) Except where specifically approved in writing by the State on a case-by-case basis, Contractor shall flow down the obligations in **Sections 5.1, 7, 8.8, 13, 14, 15.1, 15.3, 16, 24.1, 24.4, and 25.7** in all of its agreements with any Subcontractors.

5.5 CONTRACTOR RESPONSIBILITY FOR PERSONNEL

Contractor shall be responsible for all acts and omissions of its employees, as well as the acts and omissions of any other personnel furnished by Contractor to perform under the Contract.

6. DELIVERY AND ACCEPTANCE OF DELIVERABLES; HOLDBACK

6.1 DELIVERY RESPONSIBILITIES

Unless otherwise specified within an individual order, the following shall be applicable to all orders issued under this Contract.

- (a) **SHIPMENT RESPONSIBILITIES** - services performed under this contract shall be delivered “F.O.B. Destination, within Government Premises.” The Contractor shall have complete responsibility for providing all contracted services to all sites. Actual delivery dates will be specified on the individual purchase order.
- (b) **DELIVERY LOCATIONS** - Specific locations will be provided by the State or upon issuance of individual purchase orders.

6.2 DELIVERY OF DELIVERABLES

- (a) Where applicable the Statements of Work contain lists of the Deliverables to be prepared and delivered by Contractor including, for each Deliverable, the scheduled delivery date and a designation of whether the Deliverable is a document (“Written Deliverable”), a good (“Physical Deliverable”) or a service (“Service Deliverable”). All Deliverables shall be completed and delivered for State review and written approval and, where applicable, installed in accordance with the State-approved delivery schedule and any other applicable terms and conditions of the Contract.

6.3 TESTING

- (a) Prior to delivering any of the above-mentioned Statement of Work Physical Deliverables or Service Deliverables to the State, Contractor will first perform all required Quality Assurance activities and System Testing to verify that the Physical or Service Deliverable is complete and in conformance with its specifications listed in the applicable Statement of Work or Purchase Order. Before delivering a Physical or Service Deliverable to the State, Contractor shall certify to the State that (1) it has performed such quality assurance activities, (2) it has performed any applicable testing, (3) it has corrected all material deficiencies discovered during such quality assurance activities and testing, and (4) the Deliverable is in a suitable state of readiness for the State’s review and approval.

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- (b) If a Deliverable includes installation at a State location, then Contractor shall (1) perform any applicable testing, (2) correct all material deficiencies discovered during such Quality Assurance activities and Testing, and (3) inform the State that the Deliverable is in a suitable state of readiness for the State's review and approval. To the extent that testing occurs at State locations, the State shall be entitled to observe or otherwise participate in Testing.

6.4 APPROVAL OF DELIVERABLES, IN GENERAL

- (a) All Deliverables (Physical Deliverables, Written Deliverables, and Service Deliverables) require formal written approval by the State, in accordance with the following procedures. Formal approval by the State requires that the Deliverable be confirmed in writing by the State to meet its specifications, which will include the successful completion of Testing as applicable in Section 6.3, to be led by the State with the support and assistance of Contractor. The parties acknowledge that the approval process set forth herein will be facilitated by ongoing consultation between the parties, visibility of interim and intermediate Deliverables and collaboration on key decisions.
- (b) The State's obligation to comply with any State Review Period is conditioned on the timely delivery of Deliverables being reviewed.
- (c) Prior to commencement of its review or testing of a Deliverable, the State may inspect the Deliverable to confirm that all components of the Deliverable have been delivered without material deficiencies. If the State determines that the Deliverable has material deficiencies, the State may refuse delivery of the Deliverable without performing any further inspection or testing of the Deliverable. Otherwise, the review period will be deemed to have started on the day the State receives the Deliverable, and the State and Contractor agree that the Deliverable is ready for use and, where applicable, certification by Contractor in accordance with Section 6.3(a).
- (d) The State will approve in writing a Deliverable upon confirming that it conforms to and, performs in accordance with, its specifications without material deficiency. The State may, but shall not be required to, conditionally approve in writing a Deliverable that contains material deficiencies if the State elects to permit Contractor to rectify them post-approval. In any case, Contractor will be responsible for working diligently to correct within a reasonable time at Contractor's expense all deficiencies in the Deliverable that remain outstanding at the time of State approval.
- (e) If, after three (3) opportunities (the original and two repeat efforts), Contractor is unable to correct all deficiencies preventing Final Acceptance of a Deliverable, the State may: (i) demand that Contractor cure the failure and give Contractor additional time to cure the failure at the sole expense of Contractor; or (ii) keep the Contract in force and do, either itself or through other parties, whatever Contractor has failed to do, in which event Contractor shall bear any excess expenditure incurred by the State in so doing beyond the Contract price for such Deliverable and will pay the State an additional sum equal to ten percent (10%) of such excess expenditure to cover the State's general expenses provided the State can furnish proof of such general expenses; or (iii) terminate the particular Statement of Work for default, either in whole or in part by notice to Contractor provided Contractor is unable to cure such breach. Notwithstanding the foregoing, the State shall not use, as a basis for exercising its termination rights under this Section, deficiencies discovered in a repeat State

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Review Period that could reasonably have been discovered during a prior State Review Period.

- (f) The State, at any time and in its reasonable discretion, may halt the testing or approval process if such process reveals deficiencies in or problems with a Deliverable in a sufficient quantity or of a sufficient severity as to make the continuation of such process unproductive or unworkable. In such case, the State may return the applicable Deliverable to Contractor for correction and re-delivery prior to resuming the testing or approval process.

6.5 PROCESS FOR APPROVAL OF WRITTEN DELIVERABLES

The State Review Period for Written Deliverables will be the number of days set forth in the applicable Statement of Work following delivery of the final version of the Deliverable (failing which the State Review Period, by default, shall be five (5) business days for Written Deliverables of one hundred (100) pages or less and ten (10) business days for Written Deliverables of more than one hundred (100) pages). The duration of the State Review Periods will be doubled if the State has not had an opportunity to review an interim draft of the Written Deliverable prior to its submission to the State. The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Deliverable is approved in the form delivered by Contractor or describing any deficiencies that must be corrected prior to approval of the Deliverable (or at the State's election, subsequent to approval of the Deliverable). If the State delivers to Contractor a notice of deficiencies, Contractor will correct the described deficiencies and within thirty (30) business days resubmit the Deliverable in a form that shows all revisions made to the original version delivered to the State. Contractor's correction efforts will be made at no additional charge. Upon receipt of a corrected Deliverable from Contractor, the State will have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Deliverable to confirm that the identified deficiencies have been corrected.

6.6 PROCESS FOR APPROVAL OF SERVICE DELIVERABLES

The applicable Statement of Work governs the State Review Period for approval of Service Deliverables (failing which the State Review Period, by default, shall be thirty (30) business days for a Service Deliverable). The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Deliverable is approved in the form delivered by Contractor or describing any deficiencies that must be corrected prior to approval of the Deliverable (or at the State's election, subsequent to approval of the Deliverable). If the State delivers to Contractor a notice of deficiencies, Contractor will correct the described deficiencies and within thirty (30) business days resubmit the Deliverable in a form that shows all revisions made to the original version delivered to the State. Contractor's correction efforts will be made at no additional charge. Upon receipt of a corrected Deliverable from Contractor, the State will have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Deliverable to confirm that the identified deficiencies have been corrected.

6.7 PROCESS FOR APPROVAL OF PHYSICAL DELIVERABLES

The applicable Statement of Work governs the State Review Period for approval of Physical Deliverables (failing which the State Review Period, by default, shall be thirty (30) continuous

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business days for a Physical Deliverable). The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Deliverable is approved in the form delivered by Contractor or describing any deficiencies that must be corrected prior to approval of the Deliverable (or at the State's election, subsequent to approval of the Deliverable). If the State delivers to Contractor a notice of deficiencies, Contractor will correct the described deficiencies and within thirty (30) business days resubmit the Deliverable in a form that shows all revisions made to the original version delivered to the State. Contractor's correction efforts will be made at no additional charge. Upon receipt of a corrected Deliverable from Contractor, the State will have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Deliverable to confirm that the identified deficiencies have been corrected.

6.8 FINAL ACCEPTANCE

"Final Acceptance" of each Deliverable shall occur when each Deliverable has been approved by the State following the State Review Periods identified in Section 6. Payment will be made for Deliverables installed and accepted. Upon acceptance of a Service Deliverable, the State will pay for all services provided during the State Review Period that conformed to the acceptance criteria.

7. PERFORMANCE

7.1 PERFORMANCE, IN GENERAL

The State hereby engages Contractor to execute the Contract and perform the services, and Contractor undertakes to execute and complete the Contract and services in their entirety in accordance with the terms and conditions of the Contract and with the participation of State representatives as specified in the Contract.

7.2 TIME OF PERFORMANCE

- (a) Contractor shall use commercially reasonable efforts to provide the resources necessary to complete all services and Deliverables in accordance with the time schedules contained in the Statements of Work and other Exhibits governing the work, and with professional quality.
- (b) Without limiting the generality of **Section 7.2(a)**, Contractor shall notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Contract Deliverables or tasks on the scheduled due dates set forth in the latest State-approved delivery schedule and, in such event, shall inform the State of the projected actual delivery date.
- (c) If Contractor believes that a delay in performance by the State has caused or will cause Contractor to be unable to perform its obligations in accordance with specified Contract time periods, Contractor shall notify the State in a timely manner and shall use commercially reasonable efforts to perform its obligations in accordance with such Contract time periods notwithstanding the State's failure. Contractor will not be in default for a delay in performance to the extent such delay is caused by the State.

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7.3 LIQUIDATED DAMAGES.

Set forth below are liquidated damages specific to the MMITT Contract for (1) failure by the Contractor to make timely delivery of deliverables listed below in 7.3a (any such failure being referred to below as a "Late Delivery"), (2) software provide by the Contractor to the State containing or introducing a software virus that results in contamination or damage to the State's equipment or its mainframe, network, personal computing or other operating environments (any such item of software being referred to below as "Contaminated Software").

In these cases it is agreed that it would be impractical and extremely difficult to fix the actual amount of damages sustained by the State as a result of any such Late Delivery, Unauthorized Removal or Contaminated Software. Therefore, the Contractor and the State agree that, in the event of any such Late Delivery or Contaminated Software, the liquidated damage amounts specified below are a reasonable approximation of the damages that will be suffered by the State as the result thereof.

Accordingly, in the event of such Late Delivery or Contaminated Software, at the written direction of the State Office of Acquisition Services, the Contractor agrees to pay the indicated amount to the State as liquidated damages, and not as a penalty. Liquidated damages shall be payable with fifteen (15) business days after notification of assessment by the State. In its discretion, the State may deduct any liquidated damages assessed by the State from any charges payable to the Contractor pursuant to the Contract. No delay by the State in assessing or collecting liquidated damages shall be construed as a waiver of such right.

For the purpose of determining when liquidated damages are due to the State under this Section, the date on which the Contractor shall be considered to have delivered a deliverable to the State is the date on which the Contractor delivers the deliverable to the State in a form that is subsequently determined by the State to meet the acceptance criteria for such deliverable, **provided, however, that the Contractor shall not be liable for liquidated damages for the period in which the State is determining whether such deliverables are acceptable.**

1. Late Delivery of Products and Services

The delivery and/or installation dates of products (hardware & software) and services set forth by the Purchase Order submitted by the State will be fixed so that the utilization of the products and services will be consistent with the timing schedules of the State's programs. If any of the above mentioned products or services are not delivered and/or installed to the State within the time specified by the Agency in the Purchase Order or signed work statement, the delay will interfere with the proper implementation of the State's programs utilizing the products or services pursuant to the Contract, to the lost and damage of the State.

- a. If the Contractor does not install or deliver each of the products, quotes, Statement of Work, Warranty Service, Maintenance Service, or other services as required in the Agency Purchase order or the signed Statement of Work, (but not to exceed the general terms & conditions of the MMITT Contract without mutual agreement of the Contractor and the State) ready for use, on or before the required date specified in that Agency Purchase Order or Statement of Work, the State Office of Acquisition Services, in its sole discretion, may require the Contractor to pay the State liquidated damages for each calendar day between the required date specified on the Agency Purchase order or signed

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Statement of Work and the date of actual delivery and/or installation for such products or services, (but not more than 180 calendar days see 1-C below) in lieu of all other damages due to such late delivery or late performance in a amount calculated as follows for each unit of equipment or software package:

Late Installation/Delivery – Desktop Equipment	\$25/day
Late Installation/Delivery – Software Package	\$13/day
Late Delivery – Services	\$63/day
Late Delivery – Warranty Service (Desktop)	\$25/day
Late Delivery – Warranty Service (Servers)	\$63/day
Late Delivery – Maintenance Services (Desktop)	\$25/day
Late Delivery – Maintenance Services (LAN/Server)	\$63/day
Late Installation/Delivery – LAN Equipment	\$63/day
Late Installation/Delivery – Server Equipment	\$63/day

If the Contractor supplies substitute products or services acceptable as indicated by the MMITT Training Administrator, liquidated damages will not apply, provided, however, liquidated damages will apply if such substitute hardware or software package is provided later than the delivery or installation date specified on the Agency Purchase Order.

- b. If the delay is more than twenty (20) business days, then by written notice to the Contractor, the State may terminate the right of the Contractor to deliver or install, and may obtain substitute products or services. In this event, the Contractor shall be liable for liquidated damages in the amount specified above until acceptable substitute products or services are delivered or installed, ready for use, or for 120 business days from the installation date, whichever occurs first. The Contractor shall also be liable for outbound preparation and shipping costs for Contracted items returned under this clause; and for any additional cost incurred by the State for products and/or services provided by an alternative source resulting from the delay.
- c. Contractor shall not be assessed liquidated damages for late delivery or installation if the equipment or software is a “constrained” product. A “constrained” product is a product that is not available from the manufacturer within the desired time frame. The Prime Contractor may be required to furnish documents from the manufacturer to validate that a product is constrained. If Contractor reasonably determines that a product is “constrained”, Contractor will identify a functionally equivalent product or component as a temporary substitution and will make a request to for the MMITT Training Administrator and the Office of Acquisition Services to authorize shipment of such substitution. The involved Agency will also retain the option to receive the product originally requested with delivery as soon as the product becomes available from the manufacturer. Authorization will be deemed valid if received from either the MMITT Training Administrator or the Office of Acquisition Services. If the manufacturer is unable to correct the delivery-related problem, or consistently misses its delivery promises, Contractor will request approval from the State that the functionally equivalent product or component be added to the Product Web Catalog as a permanent replacement.

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2. Contaminated Software.

If any software provided by the Contractor contains or introduces a software virus that results in contamination or damage to the State's equipment or its mainframe, network, personal computing or other operating environments, the Contractor will pay the State, as liquidated damages, the following amounts:

- (a) \$5,000 for each or fraction of an hour in excess of one (1) hour that any mainframe computer function or operation available prior to the introduction of the Contaminated Software is unavailable to one or more persons in the State's user community; and
- (b) \$200 for each hour or fraction of an hour in excess of one (1) hour for each piece of equipment in the State's network or personal computing environment unable to perform any function or operation which it was able to perform prior to the introduction of the Contaminated Software.

The liquidated damages set forth herein shall be in addition to the Contractor's obligation to remove the software virus from all of the State's operating environments, to restore all operations and functionality in all such operating environments, and to recover or recreate all damaged files, all at no additional charge to the State. The State may, however, at its option, elect to restore or recreate damaged or lost data files at Contractor's expense, in which event Contractor shall pay the State \$50 for each hour or fraction of an hour multiplied by the total number of staff hours that State personnel expend to recover or recreate damaged State data files.

7.4 RESERVED

7.5 RESERVED

7.6 SERVICE LEVEL AGREEMENTS (SLA)

Please see Statement of Work for SLA requirements.

If the Contractor misses any of the Service Level Agreements in this Contract more than two quarters in a calendar year, the Contractor will be responsible for assembling a remediation plan in 10 business days to resolve the issues impairing metric performance. The remediation plan will be submitted to the MMITT Training Administrator. Upon State approval, the Contractor will form a project team to resolve the inadequacies.

The State and the Contractor will monitor the remediation plan. If the metrics do not improve in the next calendar month, then the State reserves the right to assess liquidated damages up to and including cancellation of the Contract.

7.7 BANKRUPTCY

If Contractor shall file for protection under the bankruptcy laws, or if an involuntary petition shall be filed against Contractor and not removed within thirty (30) calendar days, or if the Contractor becomes insolvent, be adjudicated bankrupt, or if it should make a general assignment for the benefit of creditors, or if a receiver shall be appointed due to its insolvency,

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and Contractor and/or its affiliates are unable to provide reasonable assurances that Contractor and/or its affiliates can deliver the services provided herein, the State may, without prejudice to any other right or remedy, terminate the Contract, in whole or in part, and, at its option, may take possession of the "Work in Process" and finish such Works in Process by whatever appropriate method the State may deem expedient. Contractor will fix appropriate notices or labels on the Work in Process to indicate ownership by the State. To the extent reasonably possible, materials and Work in Process shall be stored separately from other stock and marked conspicuously with labels indicating ownership by the State.

To secure the State's progress payments prior to the delivery of any services or materials required for the execution of Contractor's obligations hereunder, and any work which Contractor may sub Contract in the support of the performance of its obligations hereunder, shall vest in the State to the extent the State has made progress payments hereunder.

8. PROJECT AND CONTRACT MANAGEMENT

8.1 CONTRACT MANAGEMENT RESPONSIBILITY

- (a) Contractor shall have overall responsibility for managing and successfully performing and completing the services, subject to the overall direction and supervision of the State and with the participation and support of the State as specified in the Contract. Contractor's duties will include monitoring and reporting the State's performance of its participation and support responsibilities (as well as Contractor's own responsibilities) and providing timely notice to the State in Contractor's reasonable opinion if the State's failure to perform its responsibilities in accordance with the (Project Plan) is likely to delay the timely achievement of any Contract tasks.
- (b) The Contractor will provide the services, either directly or through its affiliates, subsidiaries, subcontractors or resellers. Regardless of the entity providing the service, the Contractor will act as a single point of contact coordinating these entities to meet the State's need for services. Nothing in the Contract, however, shall be construed to authorize or require any party to violate any applicable law or regulation in its performance of the Contract.

8.2 RESERVED

8.3 REPORTS AND MEETINGS

- (a) Reports are defined in Section II, Statement Of Work.
- (b) Meetings. In addition to the Joint Operations Meeting, within twenty (20) business days after the Effective Date, the parties shall determine an appropriate set of meetings to be held between representatives of the State and Contractor. Contractor shall prepare and circulate an agenda sufficiently in advance of each such meeting to give participants an opportunity to prepare for the meeting. Contractor shall incorporate into such agenda items that the State desires to discuss. At the State's request, Contractor shall prepare and circulate minutes promptly after a meeting.

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8.4 SYSTEM CHANGES

Contractor is not responsible for and not authorized to make changes to any State systems without express written authorization from the State. Any changes Contractor makes to State systems with the State's approval shall be done in accordance with applicable State procedures, including security, access and configuration management procedures.

8.5 MODIFICATION OF SERVICE

The State reserves the right to request from time to time, any changes to the requirements and specifications of the Contract and the work to be performed by the Contractor under the Contract. During the course of ordinary business, it may become necessary for the State to discontinue certain business practices or create Additional Services. The Contractor shall provide a change order process and all requisite forms. At a minimum, to the extent applicable, the State would like the Contractor to provide a detailed outline of all work to be done, including tasks necessary to accomplish the deliverables, timeframes, listing of key personnel assigned, estimated hours for each individual per task, and a complete and detailed cost justification.

- (a) Within five (5) business days of receipt of a request by the State for any such change, or such other period of time as to which the parties may agree mutually in writing, the Contractor shall submit to the State a proposal describing any changes in products, services, timing of delivery, assignment of personnel, and the like, and any associated price adjustment. The price adjustment shall be based on a good faith determination and calculation by the Contractor of the additional or reduced cost to the Contractor in implementing the Change Request less any savings realized by the Contractor as a result of implementing the Change Request. To the extent applicable, Contractor's proposal shall describe in reasonable detail the basis for the Contractor's proposed price adjustment, including the estimated number of hours by task by labor category required to implement the Change Request and the reason for any deviation from the rates listed in the Contract.
- (b) If the State accepts the Contractor's proposal, it will issue a change notice and the Contractor will implement the Change Request described therein. The Contractor will not implement any Change Request until a change notice has been issued validly. The Contractor shall not be entitled to any compensation for implementing any Change Request or change notice except as provided explicitly in an approved change notice.
- (c) If the State does not accept the Contractor's proposal, the State may:
 - (i) Withdraw its Change Request; or
 - (ii) Modify its Change Request, in which case the procedures set forth above will apply to the modified Change Request.

If the State requests or directs the Contractor to perform any activities that are outside the scope of the Contractor's responsibilities under the Contract ("New Work"), the Contractor must notify the State promptly, and before commencing performance of the requested activities, that it believes the requested activities are New Work. If the Contractor fails to so notify the State before commencing performance of the requested activities, any such activities performed before the Contractor gives notice shall be conclusively considered to be In-scope Services, not New Work.

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If the State requests or directs the Contractor to perform any services or functions that are consistent with and similar to the services being provided by the Contractor under the Contract, but which the Contractor reasonably and in good faith believes are not included within the Statements of Work, then prior to performing such services or function, the Contractor shall promptly notify the State in writing that it considers the services or function to be an “Additional Service” for which the Contractor should receive additional compensation. If the Contractor does not so notify the State, the Contractor shall have no right to claim thereafter that it is entitled to additional compensation for performing that service or function. If the Contractor does so notify the State, then the Change Request procedure set forth in the preceding paragraph shall govern such a service or function. In the event prices or service levels are not acceptable to the State, the additional work shall be subject to competitive bidding based upon the specifications.

- (d) If the State proposes to acquire New Work or Additional Services that fall under the Contract, Contractor will have the first right to provide a proposal under this Section before the State seeks other proposals.

8.6 CHANGE REQUESTS

- (a) State Change Requests.

- (i) If the State should require Contractor to perform New Services or make changes to the services that would affect the Contract completion schedule or the amount of compensation due Contractor (a “Change”), the State shall submit a written request for Contractor to furnish a proposal for carrying out the requested Change (a “Change Request”).
- (ii) Upon receipt of a Change Request, Contractor shall examine the implications of the requested Change on the technical specifications, Contract schedule and price of the services and shall submit to the State without undue delay a written proposal for carrying out the Change. Contractor’s proposal will include any associated changes in the technical specifications, Contract schedule and price and method of pricing of the services. If the Change is to be performed on a time and materials basis, the Amendment Labor Rates shall apply to the provision of such services. If Contractor provides a written proposal and should Contractor be of the opinion that a requested Change is not to be recommended, it shall communicate its opinion to the State but shall nevertheless carry out the Change as specified in the written proposal if the State directs it to do so.
- (iii) By giving Contractor written notice within a reasonable time, the State shall be entitled to accept Contractor proposal for Change, to reject it or to reach another agreement with Contractor. Should the parties agree on carrying out a Change, a written Contract Change Notice shall be prepared and issued under the Contract, describing the Change and its effects on the services and any affected components of the Contract (a “Contract Change Notice”).
- (iv) No proposed Change shall be performed until the proposed Change has been specified in a duly executed Contract Change Notice.

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(v) If the State requests or directs Contractor to perform any activities that Contractor believes constitute a Change, Contractor must notify the State that it believes the requested activities are a Change prior to commencing the performance of the requested activities. If Contractor fails to so notify the State prior to commencing performance of the requested activities, such activities shall be considered to be performed gratuitously by Contractor, and Contractor shall not have any right thereafter to assert any claim for additional compensation or time for the performance of such activities. If Contractor commences performance of gratuitous services outside the scope of the Contract and subsequently elects to stop performing such out-of-scope services, Contractor must, at the request of the State, back out or reverse any changes resulting from such performance that would adversely affect the Contract.

(b) Contractor Change Requests.

(i) Contractor shall be entitled to propose a Change to the State, on its own initiative, should it be of the opinion that this would benefit the Contract. Contractor's proposal for such Change shall be in writing and reasonably detailed. The procedures described in this Section shall apply to any such proposal.

(ii) Upon receipt of a Change Request from the Contractor, the State shall examine the implications of the requested Change on the technical specifications, Contract schedule and price of the services. Contractor's proposal will include any associated changes in the technical specifications, Contract schedule and price and method of pricing of the services. If the Change is to be performed on a time and materials basis, the Amendment Labor Rates shall apply to the provision of such services.

(iii) By giving Contractor written notice within a reasonable time, the State shall be entitled to accept a Contractor proposal for Change, to reject it or to reach another agreement with Contractor. Should the parties agree on carrying out a Change, a written Contract Change Notice shall be prepared and issued under the Contract, describing the Change and its effects on the services and any affected components of the Contract (a "Contract Change Notice").

(iv) No proposed Change shall be performed until the proposed Change has been specified in a duly executed Contract Change Notice.

8.7 MANAGEMENT TOOLS

Contractor will use an automated tool for planning; monitoring and tracking the Contract's progress and the level of effort of any Contractor personnel spent performing services under the Contract. In addition, Contractor shall use automated project management tools as reasonably necessary to perform the services, which tools shall include the capability to produce through the end of the Contract:

(1) Staffing tables with names of personnel assigned to Contract tasks.

(2) Project plans showing tasks, subtasks, Deliverables and the resources required and allocated to each (including detailed plans for all services to be performed within the next sixty (60) calendar days, updated semi-monthly); and

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- (3) Graphs showing critical events, dependencies and decision points during the course of the Contract. Any tools used by Contractor for such purposes must produce information of a type and in a manner and format that will support reporting in compliance with the State's standard to the extent such standard is described with reasonable detail in the Statement of Work.

8.8 RECORDS AND INSPECTIONS

- (a) Inspection of Work Performed. The State's authorized representatives shall at all reasonable times and with fifteen (15) business days prior to written request, have the right to enter Contractor's premises, or any other places, where the services are being performed, and shall have access, upon reasonable request, to interim drafts of Deliverables or work-in-progress. Upon fifteen (15) business days prior written notice and during business hours, the State's representatives shall be allowed to inspect, monitor, or otherwise evaluate the work being performed and to the extent that such access will not interfere or jeopardize the safety or operation of the systems or facilities. Contractor must provide all reasonable facilities and assistance for the State's representatives, so long as no security, labor relations policies and propriety information policies are violated.
- (b) Examination of Records. No more than once per year, Contractor agrees that the State, including its duly authorized representatives, until the expiration of three (3) years after final payment of all amounts due under the Contract and all pending matters are closed (collectively, the "Audit Period"), shall, upon twenty (20) business days prior written notice, have access to and the right to examine and copy any of Contractor's books, records, documents and papers pertinent to establishing Contractor's compliance with the terms and conditions of the Contract and with applicable laws and rules, including the State's procurement rules, regulations and procedures, and actual performance of the Contract for the purpose of conducting an audit, examination, excerpt and/or transcription but the State shall not have access to any information deemed confidential to Contractor to the extent such access would require such confidential information to become publicly available. This provision also applies to the books, records, accounts, documents and papers, in print or electronic form, of any parent, affiliated or subsidiary organization of Contractor, or any Subcontractor of Contractor performing services in connection with the Contract.
- (c) Retention of Records. Contractor shall maintain at least until the end of the Audit Period all pertinent financial and accounting records (including time sheets and payroll records, and information pertaining to the Contract and to the services, equipment, and commodities provided under the Contract) pertaining to the Contract in accordance with generally accepted accounting principles and other procedures specified in this Section. Financial and accounting records shall be made available, upon request, to the State at any time during the Audit Period. If an audit, litigation, or other action involving Contractor's records is initiated before the end of the Audit Period, the records must be retained until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.

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8.9 BINDING COMMITMENTS

Representatives of Contractor identified in the Required Contractor Information Section I 1.6 shall have the authority to make binding commitments on Contractor's behalf within the bounds set forth in this section. Contractor may change such representatives from time to time upon written notice.

9. STATE RESPONSIBILITIES

9.1 STATE PERFORMANCE OBLIGATIONS

- (a) Personnel. The State shall provide adequate resources to perform the State's tasks described herein. If the State, or its Contractor or agents, fails to provide such personnel resources, Contractor will use commercially reasonable efforts (subject to **Section 9.2**) to perform its obligations notwithstanding such failure and to otherwise work around and mitigate the adverse effects of such failure. If Contractor reasonably believes that the State's failure to comply with this **Section 9.1** has interfered with, delayed or impeded Contractor's performance, Contractor may propose to the State a Change pursuant to **Section 8.6**. Contractor will not be in default for a delay in performance to the extent such delay is caused by the State.
- (b) Equipment and Other Resources. To facilitate Contractor's performance of the services, the State shall provide to Contractor such equipment and resources as identified in the Statement of Work or other Contract Exhibits as items to be provided by the State.
- (c) Facilities. The State shall designate space as long as it is available, to house Contractor's personnel whom the parties agree will perform the services at State facilities (collectively, the "State Facilities"). Such State Facilities shall be of the same or similar kind and quality provided to the State's own employees. Contractor shall have reasonable access to, and unless agreed otherwise by the parties in writing shall observe and comply with all rules and regulations relating to, each of the State Facilities (including hours of operation) used by Contractor in the course of providing the services. Contractor agrees that it will not, without the prior written consent of the State, use any State Facilities or access any State information systems provided for Contractor's use, or to which Contractor otherwise gains access in the course of performing the services, for any purpose other than providing the services to the State.
- (d) Return. Contractor shall be responsible for returning to the State any State-furnished equipment, facilities and other resources when no longer required for the Contract in the same condition as when provided by the State, reasonable wear and tear excepted.

9.2 SAVINGS CLAUSE

Except as otherwise provided in **Section 20**, the State's failure to perform its responsibilities set forth in the Contract shall not be deemed to be grounds for termination by Contractor. However, Contractor will not be liable for any default or delay in the performance of its obligations under the Contract to the extent such default or delay is caused by nonperformance of the State's obligations under the Contract, provided Contractor supplies the State with reasonable written notice of such nonperformance and Contractor uses commercially reasonable efforts to perform

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notwithstanding the State's failure to perform. In addition, if the State's nonperformance of its responsibilities under the Contract materially increases the time required for Contractor's performance or Contractor's cost of performance, Contractor shall be entitled to seek an equitable extension via the Change Request process described in **Section 8.6**.

9.3 RESERVED

9.4 RESERVED

10.0 FINANCIAL

10.1 PRICING

- (a) Fixed Prices for Services. Each Statement of Work issued under the Contract shall specify (or indicate by reference to the appropriate Contract Exhibit) the firm, fixed prices for all services and items to be provided hereunder, and the associated payment milestones and payment amounts. To the extent the parties agree that certain specific services will be provided on a time and materials basis, such services shall be provided within the Contractors pricing section.
- (b) Adjustments for Reductions in Scope of Services. If the scope of the services under any Statement of Work issued under the Contract is subsequently reduced by the State, the parties shall negotiate an equitable reduction in Contractor's charges under such Statement of Work commensurate with the reduction in scope, using the rates in Contractors pricing section unless specifically identified in an applicable Statement of Work.
- (c) Services Covered. For all services, functions and items provided or to be provided by Contractor (and its Subcontractors, if any) under the Contract, the State shall not be obligated to pay any amounts in addition to the charges specified in the Contract.
- (d) Labor Rates. All time and material charges will be at the rates specified in the Contractors pricing section.
- (e) Reserved.
- (f) Fraud. Except as provided by Contractor's standard and applicable fraud policies, as published from time-to-time, and as otherwise stated in the Contract, the State is responsible and agrees to pay Contractor for all services furnished under the Contract. This responsibility is not changed by virtue of any use, misuse, or abuse of the service, which may be occasioned by the State or third parties, including employees of the State or other members of the public.
- (g) Reserved.

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10.2 INVOICING AND PAYMENT PROCEDURES AND TERMS

Invoices will be accepted after products are shipped or services received. Each invoice must be sent to the specific address listed on the purchase order. Where possible, invoices should indicate whether they are partial or complete invoices for the referenced purchase order. Invoice for services must include the service dates and, where applicable, the exact number of hours billed by resource for the period. Each invoice must include the State's purchase order number. The State is exempt from State sales tax and such taxes may not be applied to any purchase order. The invoice price should be based upon the current price at the time of order.

(a) Invoicing and Payment – In General.

(i) Each Statement of Work issued under the Contract shall list (or indicate by reference to the appropriate Contract Exhibit) the prices for all services, equipment and commodities to be provided hereunder, and the associated payment milestones and payment amounts.

(ii) Each invoice will show the details of the work that was done for the period of time the invoice is covering.

(iii) Correct invoices will be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984, Public Act No. 279, MCL 17.51 et seq., within forty-five (45) calendar days after receipt, provided the State determines that the invoice was properly rendered. By mutual agreement between Contractor and the State, the State may utilize procurement cards (P-Card) as a method of payment.

(iv) Invoice Format – Invoices must be submitted by the Contractor in the form specified by the State. The invoice will show details as to cost by equipment, software and service provided at a level of detail specified by the State, which level of detail shall be as reasonably necessary to satisfy the State's accounting and charge back requirements. At the State's option, and in addition to, and not in lieu of, printed invoices, the Contractor may be required by the State to render invoices via electronic media.

(b) Taxes. The State is exempt from Federal Excise Tax, State and Local Sales Taxes, and Use Tax with respect to the sale to and use by it of tangible personal property. Such taxes shall not be included in Contract prices as long as the State maintains such exemptions. Excise Tax exemption certificates will be furnished with purchase order if requested. Copies of all tax exemption certificates shall be supplied to Contractor.

(c) Out-of-Pocket Expenses. Contractor acknowledges that the out-of-pocket expenses that Contractor expects to incur in performing the services (such as, but not limited to, travel and lodging, document reproduction and shipping, and long distance telephone) are included in Contractor's fixed price for each Statement of Work. Accordingly, Contractor's out-of-pocket expenses are not separately reimbursable by the State unless, on a case-by-case basis for unusual expenses, the State has agreed in advance and in writing to reimburse Contractor for such an expense at the State's current travel reimbursement rates. Such reimbursement will be limited to reasonable and actual expenses incurred which, in the case of air travel, shall be limited to coach-class fare.

(d) Reserved.

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- (e) Reserved.
- (f) Pro-ration. To the extent there are any services that are to be paid for on a monthly basis, the cost of such services shall be pro-rated for any partial month.
- (g) Antitrust Assignment. The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of the Contract.
- (h) Final Payment. The making of final payment by the State to Contractor does not constitute a waiver by either party of any rights or other claims as to the other party's continuing obligations under the Contract, nor will it constitute a waiver of any claims by one party against the other arising from unsettled claims or failure by a party to comply with the Contract, including claims for Services and Deliverables not reasonably known until after acceptance to be defective or substandard. Contractor's acceptance of final payment by the State under the Contract shall constitute a waiver of all claims by Contractor against the State for payment under the Contract, other than those claims previously filed in writing on a timely basis and still unsettled.

10.3 RESERVED

11. BACKGROUND CHECKS

The Contractor will be required to authorize the investigation of its personnel proposed to have access to State Facilities and systems. The scope of the background check is at the discretion of the State and the results will be used to determine Contractor personnel eligibility for working within State Facilities and systems. Such investigations may include Michigan State Police Background checks (ICHAT) as well as the National Crime Information Center (NCIC) Finger Prints. Proposed Contractor personnel may be required to complete and submit an RI-8 Fingerprint Card for the NCIC Finger Print Check.

All Contractor personnel will also be expected to comply with the State's acceptable use policies for State IT equipment and resources. Furthermore, Contractor personnel will be expected to sign an annual State of Michigan Contractor Security Agreement before the Contractor personnel will be accepted as a resource to perform work for the State. It is expected the Contractor will present these documents to the prospective employee before the Contractor presents the individual to the State as a proposed resource. Contractor staff will be expected to comply with all Physical Security procedures in place within the facilities where they are working.

12. EQUIPMENT

12.1 RESERVED

12.2 RESERVED

12.3 RISK OF LOSS

Risk of loss for each item of equipment provided under the Contract by Contractor shall pass upon written acknowledgement of receipt (*i.e.*, signature on delivery) of such item by the State at State locations.

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12.4 DAMAGE DISPUTES

At the time of delivery to State locations, the State shall examine all packages. The quantity of packages delivered shall be recorded and any obvious visible or suspected damage shall be noted at time of delivery using the shipper's delivery document and appropriate procedures to record such. The State shall provide a copy of all shippers' receipts to the Contractor of any items that are damaged or suspected of being damaged at the time of delivery and the Contractor shall make arrangements for the return of such equipment. To not make such a note of actual or suspected damage at time of delivery means the receiving party accepts the delivery as is. If later it is determined the delivery is damaged, the cure for such damaged deliveries shall transfer to the delivery signing party.

If the Contractor is responsible for installation and delivery is made to a State location; at the time of delivery, the State shall examine all packages. The quantity of packages delivered shall be recorded and any obvious visible or suspected damage shall be noted at time of delivery using the shipper's delivery document and appropriate procedures to record such and a copy of this document provided to the Contractor. To not make such a note of actual or suspected damage at time of delivery means the receiving party accepts the delivery as is. If later it is determined the delivery is damaged, the cure for such damaged deliveries shall transfer to the delivery signing party.

Where there is no obvious or suspected damage, all deliveries to a State location must be opened by the State and the contents inspected for possible physical damage within twenty (20) business days of receipt. Any damage must be reported to the Contractor.

13. CONFIDENTIALITY

13.1 CONFIDENTIAL INFORMATION

Contractor and the State each acknowledge that the other possesses and will continue to possess confidential information that has been developed or received by it. As used in this Section, "Confidential Information" of Contractor shall mean all non-public proprietary information of Contractor (other than Confidential Information of the State as defined below) that is marked confidential, restricted, and proprietary or with a similar designation. "Confidential Information" of the State shall mean any information which is retained in confidence by the State (or otherwise required to be held in confidence by the State pursuant to applicable federal, state and local laws and regulations) or which, in the case of tangible materials provided to Contractor by the State pursuant to its performance under the Contract, is marked as confidential, proprietary or with a similar or identified designation by the State.

13.2 PROTECTION OF CONFIDENTIAL INFORMATION

The State and Contractor will each use at least the same degree of care to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication or dissemination of its own confidential information of like character, but in no event less than reasonable care. Neither Contractor nor the State will (i) make any use of the Confidential Information of the other except as contemplated by the Contract, (ii) acquire any right in or assert any lien against the Confidential Information of the other, or (iii) if requested to do so, refuse for any reason to promptly return or destroy (with written verification of

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destruction) the other party's Confidential Information to the other party, except as otherwise provided by law. Each party will limit disclosure of the other party's Confidential Information to employees and Subcontractors who must have access in order to fulfill the purposes of the Contract. Disclosure to, and use by, a Subcontractor is permissible where (A) use of a Subcontractor is authorized under the Contract, (B) such disclosure is necessary or otherwise naturally occurs in connection with work that is within such Subcontractor's scope of responsibility, and (C) Contractor obligates the Subcontractor in a written Contract to protect the State's Confidential Information in confidence. At the State's request, any employee of Contractor and of any Subcontractor having access or continued access to the State's Confidential Information may be required to execute an acknowledgment that the employee has been advised of Contractor's and the Subcontractor's obligations under this Section and of the employee's obligation to Contractor or Subcontractor, as the case may be, to protect such Confidential Information from unauthorized use or disclosure.

13.3 EXCLUSIONS

Notwithstanding the foregoing, the provisions of **Section 13** will not apply to any particular information which the State or Contractor can demonstrate (i) was, at the time of disclosure of it, in the public domain; (ii) after disclosure of it, is published or otherwise becomes part of the public domain through no fault of the receiving party; (iii) was in the possession of the receiving party at the time of disclosure of it without an obligation of confidentiality; (iv) was received after disclosure of it from a third party who had a lawful right to disclose such information without any obligation to restrict its further disclosure; or (v) was independently developed by the receiving party without reference to Confidential Information of the furnishing party.

Further, the provisions of **Section 13** will not apply to any particular Confidential Information to the extent the receiving party is required by law to disclose such Confidential Information, provided that the receiving party (i) promptly provides the furnishing party with notice of the legal request, and (ii) assists the furnishing party in resisting or limiting the scope of such disclosure as reasonably requested by the furnishing party. In the case of information of either Contractor or the State "Confidential Information" shall exclude any information (including the Contract) that is publicly available pursuant to the Michigan Freedom of Information Act, 1976 Public Act No. 442, as amended, MCL 15.231, *et seq.* Notwithstanding the foregoing, neither party waives its rights to pursue actions to protect and/or keep its information confidential.

13.4 NO IMPLIED RIGHTS

Nothing contained in this **Section 13** (Confidentiality) shall be construed as obligating a party to disclose any particular Confidential Information to the other party, or as granting to or conferring on a party, expressly or impliedly, any right or license to the Confidential Information of the other party.

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13.5 REMEDIES

Each party acknowledges that, if it breaches (or attempts or threatens to breach) its obligations under **Section 13**, the other party may be irreparably harmed. Accordingly, if a court of competent jurisdiction should find that a party has breached (or attempted or threatened to breach) any such obligations, the non-breaching party shall be entitled to seek an injunction preventing such breach (or attempted or threatened breach) unless such injunction would create an unreasonable risk for the safety and security of the public and/or State employees.

13.6 SURVIVAL

The parties' respective obligations under this **Section 13** shall survive the termination or expiration of the Contract for any reason.

14. PROPRIETARY RIGHTS AND SOFTWARE

14.1 RIGHTS IN DATA

- (a) The State will be and remain the owner of all data made available by the State to Contractor or its agents, Subcontractors or representatives pursuant to the Contract. Contractor will not use the State's data for any purpose other than providing the services, nor will any part of the State's data be disclosed, sold, assigned, leased or otherwise disposed of to the general public or to specific third parties or commercially exploited by or on behalf of Contractor, nor will any employee of Contractor other than those on a strictly need to know basis have access to the State's data. Contractor will not possess or assert any lien or other right against the State's data. Without limiting the generality of this Section, Contractor shall only use personally identifiable information as strictly necessary to provide the services and shall disclose such information only to its employees who have a strict need to know such information. Contractor shall comply at all times with all laws and regulations applicable to such personally identifiable information.
- (b) The State is and shall remain the owner of all State-specific data pursuant to the Contract. The State will not use the Contractor's data for any purpose other than receiving the services, nor will any part of the Contractor's data be disclosed, sold, assigned, leased or otherwise disposed of to the general public or to specific third parties or commercially exploited by or on behalf of the State, nor will any employee of the State other than those on a strictly need to know basis have access to the Contractor's data, except as provided by law. The State will not possess or assert any lien or other right against the Contractor's data. Without limiting the generality of this Section, the State shall only use personally identifiable information as strictly necessary to utilize the services and shall disclose such information only to its employees who have a strict need to know such information, except as provided by law. The State shall comply at all times with all laws and regulations applicable to such personally identifiable information. Other material developed and provided by the State shall remain the State's sole and exclusive property.

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14.2 OWNERSHIP OF MATERIALS

State and Contractor will continue to own their respective proprietary technologies developed prior to entering into the Contract. Any hardware bought through the Contractor by the State, and paid for by the State, will be owned by the State. Any software licensing purchased through the Contractor and sold to the State, will be licensed directly to the State.

14.3 STANDARD SOFTWARE

If applicable and necessary, all Standard Software used in performing the services shall be provided to the State under a separate license agreement between the State and the owner (or authorized licensor) of such software.

14.4 RESERVED

14.5 GENERAL SKILLS

Notwithstanding anything to the contrary in this Section, each party, its Subcontractors and their personnel shall be free to use and employ its and their general skills, know-how and expertise, and to use, disclose and employ any generalized ideas, concepts, know-how, methods, techniques or skills gained or learned during the course of performing the services, so long as it or they acquire and apply the foregoing without disclosure of any confidential or proprietary information of the other party.

15. REPRESENTATIONS AND WARRANTIES

15.1 CONTRACTOR'S REPRESENTATION AND WARRANTIES

- (a) Contractor represents and warrants that it is capable in all respects of fulfilling and shall fulfill all of its obligations under this Contract. Contractor further represents and warrants that the performance of all obligations under this Contract shall be provided in a timely, professional, and workman-like manner and shall meet the performance and operational standards required under this Contract.
- (b) Contractor represents and warrants that the Appendices and Exhibits to a Statement of Work identify all equipment and software and services necessary for the Statement of Work Deliverables to perform and operate in compliance with the requirements and other standards of performance contained in the Statement of Work.
- (c) Contractor represents and warrants that it is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by Contractor under this Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by Contractor to the State under this Contract, nor their use by the State, will infringe the patent, copyright, trade secret, or other proprietary rights of any third party.

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- (d) If, under this Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to and not in lieu of Contractor's other responsibilities with respect to such items as set forth in this Contract, Contractor represents and warrants that it shall assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for such Deliverable.
- (e) Contractor represents and warrants that the Contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into this Contract, on behalf of Contractor.
- (f) Contractor represents and warrants that it is qualified and registered to transact business in all locations where required.
- (g) Contractor represents and warrants that neither the Contractor nor any Affiliates, nor any employee of either, has, shall have, or shall acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under this Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor shall notify the State within two (2) business days of any such interest that may be incompatible with the interests of the State.
- (h) Contractor represents and warrants that neither Contractor nor any Affiliates, nor any employee of either has accepted or shall accept anything of value based on an understanding that the actions of the Contractor or Affiliates or employee on behalf of the State would be influenced. Contractor shall not attempt to influence any State employee by the direct or indirect offer of anything of value.
- (i) Contractor represents and warrants that neither Contractor nor any Affiliates, nor any employee of either has paid or agreed to pay any person, other than bona fide employees and consultants working solely for Contractor or such Affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.
- (j) Contractor represents and warrants that 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; 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.
- (k) Contractor represents and warrants that all financial statements, reports, and other information furnished by Contractor to the State as part of its response to the RFP or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Contractor as of the respective dates, or for the respective periods, covered by such financial statements, reports, other information. Since the respective dates or periods covered by such financial

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statements, reports, or other information, there has been no material adverse change in the business, properties, financial condition, or results of operations of Contractor.

- (l) Contractor represents and warrants that all written information furnished to the State by or behalf of Contractor in connection with this Contract, including its bid, is true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make such information not misleading.
- (m) Contractor represents and warrants that it 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 or such department within the previous five (5) years for the reason that Contractor failed to perform or otherwise breached an obligation of such contract.
- (n) Except as otherwise expressly provided in Section 15.1 Contractor makes no representations or warranties, express or implied, regarding any matter, including the merchantability, suitability, originality, fitness for a particular use or purpose, or results to be derived from the use, of any information technology service, software, hardware or other material provided under this agreement or that the operation of any such services, software, hardware or other materials will be uninterrupted or error-free.

15.2 SOFTWARE WARRANTIES

(a) Performance Warranty

The Contractor represents and warrants that Deliverables, after Final Acceptance, will perform and operate in compliance with the requirements and other standards of performance contained in this Contract (including all descriptions, specifications and drawings made a part of the Contract) for a period of sixty (60) business days unless otherwise specified in the applicable Sections. In the event of a breach of the foregoing warranty, Contractor will promptly correct the affected Deliverables at no charge to the State.

(b) No Surreptitious Code Warranty

The Contractor represents and warrants that no copy of licensed Software provided to the State contains or will contain any Self-Help Code or any Unauthorized Code as defined below. This warranty is referred to in this Contract as the “No Surreptitious Code Warranty.”

As used in this Contract, “Self-Help Code” means any back door, time bomb, drop dead device, or other software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than the licensee of the software. Self-Help Code does not include Software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee’s computer system (e.g. remote access via modem) for purposes of maintenance or technical support.

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As used in this Contract, "Unauthorized Code" means any virus, Trojan horse, spyware, worm or other Software routines or components designed to permit unauthorized access to disable, erase, or otherwise harm software, equipment, or data; or to perform any other such actions. The term Unauthorized Code does not include Self-Help Code.

In addition, Contractor will use up-to-date commercial virus detection software to detect the presence of and remove any viruses from any software prior to delivering it to the State.

(c) Calendar Warranty

The Contractor represents and warrants that all software for which the Contractor either sells or licenses to the State of Michigan and used by the State prior to, during or after the calendar year 2000, includes or shall include, at no added cost to the State, design and performance so the State shall not experience software abnormality and/or the generation of incorrect results from the software, due to date oriented processing, in the operation of the business of the State of Michigan.

The software design, to insure calendar year rollover compatibility, shall include, but is not limited to: data structures (databases, data files, etc.) that provide 4-digit date century; stored data that contain date century recognition, including, but not limited to, data stored in databases and hardware device internal system dates; calculations and program logic (e.g., sort algorithms, calendar generation, event recognition, and all processing actions that use or produce date values) that accommodates same century and multi-century formulas and date values; interfaces that supply data to and receive data from other systems or organizations that prevent non-compliant dates and data from entering any State system; user interfaces (i.e., screens, reports, etc.) that accurately show 4 digit years; and assurance that the year 2000 shall be correctly treated as a leap year within all calculation and calendar logic.

(d) Third-party Software Warranty

The Contractor represents and warrants that it will disclose the use or incorporation of any third-party software into the Deliverables. At the time of Delivery, the Contractor shall provide in writing the name and use of any Third-party Software, including information regarding the Contractor's authorization to include and utilize such software. The notice shall include a copy of any ownership agreement or license that authorizes the Contractor to use the Third-party Software.

15.3 RESERVED

15.4 PHYSICAL MEDIA WARRANTY

Contractor represents and warrants that each licensed copy of the Software provided by the Contractor is free from physical defects in the media that tangibly embodies the copy. This warranty does not apply to defects discovered more than twenty (20) business days after that date of Final Acceptance of the Software by the State. This warranty does not apply to defects arising from acts of Excusable Failure. If the Contractor breaches this warranty, then the State shall be entitled to replacement of the non-compliant copy by Contractor, at Contractor's expense (including shipping and handling).

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15.5 DISCLAIMER

The foregoing express warranties are in lieu of all other warranties and each party expressly disclaims all other warranties, express or implied, by operation of law or otherwise, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose.

15.6 CONSEQUENCES FOR BREACH

In addition to any remedies available in law, if the Contractor breaches any of the warranties contained in this section, such breach may be considered as a default in the performance of a material obligation of this Contract.

15.7 RESERVED

15.8 RESERVED

15.9 RESERVED

16. INSURANCE

16.1 COVERAGE

The Contractor is required to provide proof of the minimum levels of insurance coverage as indicated below. The purpose of this coverage shall be to protect the State from claims which may arise out of or result from the Contractor's performance of services under the terms of this Contract, whether such services are performed by the Contractor, or by any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

The Contractor waives all rights against the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents for recovery of damages to the extent these damages are covered by the insurance policies the Contractor is required to maintain pursuant to this Contract. The Contractor also agrees to provide evidence that all applicable insurance policies contain a waiver of subrogation by the insurance company.

All insurance coverage's provided relative to this Contract/Purchase Order is PRIMARY and NON-CONTRIBUTING to any comparable liability insurance (including self-insurances) carried by the State.

The insurance shall be written for not less than any minimum coverage herein specified or required by law, whichever is greater. All deductible amounts for any of the required policies are subject to approval by the State.

The State reserves the right to reject insurance written by an insurer the State deems unacceptable.

Before both parties sign the contract or before the purchase order is issued by the State, the Contractor must furnish to the Office of Acquisition Services, a certificate of insurance verifying insurance coverage. The certificate must be on the standard "accord" form. The contract or purchase order number must be shown on the certificate of insurance to assure correct filing. All

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such certificates are to be prepared and submitted by the Insurance Provider and not by the Contractor. All such certificates shall contain a provision indicating that coverage's afforded under the policies WILL NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED without THIRTY (30) days prior written notice, except for 10 days for non-payment of premium, having been given to the Office of Acquisition Services. Such NOTICE must include the CONTRACT NUMBER affected and be mailed to the person so designated in Section 25.6 Notices herein.

The Contractor is required to provide the type and amount of insurance checked () below:

1. Commercial General Liability with the following minimum coverage's:

\$2,000,000 General Aggregate Limit other than Products/Completed Operations
\$2,000,000 Products/Completed Operations Aggregate Limit
\$1,000,000 Personal & Advertising Injury Limit
\$1,000,000 Each Occurrence Limit
\$500,000 Fire Damage Limit (any one fire)

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSURED on the Commercial General Liability policy.

2. If a motor vehicle is used to provide services or products under this Contract, the Contractor must have vehicle liability insurance on any auto including owned, hired and non-owned vehicles used in Contractor's business for bodily injury and property damage as required by law.

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSURED on the vehicle liability policy.

3. Worker's disability compensation, disability benefit or other similar employee benefit act with minimum statutory limits. NOTE: (1) If coverage is provided by a State fund or if Contractor has qualified as a self-insurer, separate certification must be furnished that coverage is in the state fund or that Contractor has approval to be a self-insurer; (2) Any citing of a policy of insurance must include a listing of the States where that policy's coverage is applicable; and (3) Any policy of insurance must contain a provision or endorsement providing that the insurers' rights of subrogation are waived. This provision shall not be applicable where prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

4. For contracts providing temporary staff personnel to the State, the Contractor shall provide an Alternate Employer Endorsement with minimum coverage of \$1,000,000.

5. Employers liability insurance with the following minimum limits:

\$100,000 each accident
\$100,000 each employee by disease
\$500,000 aggregate disease

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- 6. Professional Liability Insurance (Errors and Omissions coverage) with the following minimum coverage: *(to be used if contracting for insurance agents, accountants, lawyers, architects, engineers and surveyors.)*
 - \$1,000,000 each occurrence and \$3,000,000 annual aggregate
 - \$3,000,000 each occurrence and \$5,000,000 annual aggregate
 - \$5,000,000 each occurrence and \$10,000,000 annual aggregate

16.2 SUBCONTRACTORS

Except where the State has approved in writing a Contractor subcontracts with other insurance provisions, Contractor shall require all of its Subcontractors hereunder to purchase and maintain the insurance coverage as described in **Section 16.1** for each Contractor in connection with the performance of work by such Subcontractors. Alternatively, Contractor may include any Subcontractors under Contractor's insurance on each coverage required in **Section 16.1**.

16.3 CERTIFICATES OF INSURANCE AND OTHER REQUIREMENTS

Within thirty (30) calendar days after the Effective Date of the Contract, Contractor shall furnish to the Office of Acquisition Services, certificates of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). The Contract number must be shown on each Certificate. The Certificates shall provide that the Office of Acquisition Services shall be given at least thirty (30) calendar days prior written notice (bearing the Contract number) of termination, non-renewal or reduction in limit below the amounts specified herein or in material scope of coverage of such policies. Within thirty (30) calendar days following the execution of the Contract, and every year thereafter, the Contractor shall provide evidence that the State and its agents, officers and employees are listed as additional insured's, but only to the extent of liabilities assumed by Contractor as set forth in **Section 17** of the Contract, under each commercial general liability and commercial automobile liability policy. Insurance policies listing the State as an additional insured, to the extent of liabilities assumed by Contractor as set forth in **Section 17** of the Contract, are required to contain language in the certificate which provides that, "Any litigation activity on behalf of the State of Michigan, or any of its subdivisions, as additional insured must be coordinated with the Department of Attorney General." In the event the insurer's attorney is asked to represent the State, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan. Contractor shall maintain all required insurance coverage throughout the term of the Contract and any extensions thereto and, in the case of claims-made Commercial General Liability policies, shall secure tail coverage for at least three (3) years following the expiration or termination for any reason of the Contract. The minimum limits of coverage specified above are not intended, and shall not be construed, to limit any liability or indemnity of Contractor under the Contract to any indemnified party or other persons. Contractor shall be responsible for all deductibles with regard to such insurance. If Contractor fails to pay any premium for required insurance as specified herein, or if any insurer cancels or significantly reduces any required insurance as specified herein without the State's written consent, at the State's election (but without any obligation to do so) after the State has given Contractor at least thirty (30) calendar days written notice, the State may pay such premium or procure similar insurance coverage from another company or companies; and at the State's election, the State may deduct the entire cost (or part thereof) from any payment due Contractor, or Contractor shall pay the entire cost (or any part thereof) upon demand by the State.

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17. INDEMNIFICATION

(a) General Indemnification

To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from liability of any kind, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties), accruing or resulting to any person, firm or corporation that may be injured or damaged by the Contractor in the performance of this Contract and that are attributable to the negligence or tortious acts of the Contractor or any of its subcontractors, or by anyone else for whose acts any of them may be liable provided that the Contractor is notified in writing within thirty (30) calendar days from the time that the State has knowledge of such claims. The Contractor shall not be liable to the State for consequential damages arising out of claims brought by third parties except for claims for infringement of any United States patent, copyright, trademark or trade secret.

(b) Code Indemnification

To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from any claim, loss, or expense arising from Contractor's breach of the No Surreptitious Code Warranty.

(c) Indemnification Not Limited

In any and all claims against the State of Michigan, its departments, divisions, agencies, sections, commissions, officers, employees and agents, by any employee of the Contractor or any of its subcontractors, the indemnification obligation under the Contract shall not be limited in any way by the amount or type of damages, compensation or benefits payable by or for the Contractor or any of its subcontractors under worker's disability compensation acts, disability benefit acts or other employee benefit acts. This indemnification clause is intended to be comprehensive. Any overlap in sub clauses, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other sub clauses.

(d) Patent/Copyright Infringement Indemnification

To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against the State to the extent that such action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or the operation of such equipment, software, commodity or service, or the use or reproduction of any documentation provided with such equipment, software, commodity or service infringes any United States patent, copyright, trademark or trade secret of any person or entity, which is enforceable under the laws of the United States.

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In addition, should the equipment, software, commodity, or service, or its operation, become or in the State's or Contractor's opinion be likely to become the subject of a claim of infringement, the Contractor shall at the Contractor's sole expense (i) procure for the State the right to continue using the equipment, software, commodity or service or, if such option is not reasonably available to the Contractor, (ii) replace or modify to the State's satisfaction the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if such option is not reasonably available to Contractor, (iii) accept its return by the State with appropriate credits to the State against the Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

Notwithstanding the foregoing, the Contractor shall have no obligation to indemnify or defend the State for, or to pay any costs, damages or attorneys' fees related to, any claim based upon (i) equipment developed based on written specifications of the State; or (ii) use of the equipment in a configuration other than implemented or approved in writing by the Contractor, including, but not limited to, any modification of the equipment by the State; or (iii) the combination, operation, or use of the equipment with equipment or software not supplied by the Contractor under this Contract.

(e) Continuation of Indemnification Obligations

The Contractor's duty to indemnify pursuant to Sections 17(a) and 17(b) continues in full force and effect, notwithstanding the expiration or early cancellation of the Contract, with respect to any claims based on facts or conditions that occurred prior to expiration or cancellation.

(f) Indemnification Procedures

The procedures set forth below shall apply to all indemnity obligations under this Contract.

(i) After receipt by the State of notice of the action or proceeding involving a claim in respect of which it will seek indemnification, the State shall promptly notify Contractor of such claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to so notify Contractor shall relieve Contractor of its indemnification obligations except to the extent that Contractor can demonstrate damages attributable to such failure. Within ten (10) business days following receipt of written notice from the State relating to any claim, Contractor shall notify the State in writing whether Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying Contractor of a claim and prior to the State receiving Contractor's Notice of Election, the State shall be entitled to defend against the claim, at Contractor's expense, and Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during such period.

(ii) If Contractor delivers a Notice of Election relating to any claim: (i) The State shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in the handling of such claim and to monitor and advise the State about the status and progress of the Defense; (ii) Contractor shall, at the request of the State, demonstrate to the reasonable satisfaction of the State, Contractor's financial ability to

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carry out its defense and indemnity obligations under this Contract; (iii) Contractor shall periodically advise the State about the status and progress of the defense and shall obtain the prior written approval of the State before entering into any settlement of such claim or ceasing to defend against such claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State shall have the right, at its own expense, to control the defense of that portion of such claim involving the principles of Michigan governmental or public law. Notwithstanding the foregoing, the State may retain control of the defense and settlement of a claim by written notice to Contractor given within ten (10) business days after the State's receipt of Contractor's information requested by the State pursuant to clause (ii) of this paragraph if the State determines that Contractor has failed to demonstrate to the reasonable satisfaction of the State Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State of Michigan, or any of its subdivisions pursuant to this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State pursuant to this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

(iii) If Contractor does not deliver a Notice of Election relating to any claim of which it is notified by the State as provided above, the State shall have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of Contractor. If it is determined that the claim was one against which Contractor was required to indemnify the State, upon request of the State, Contractor shall promptly reimburse the State for all such reasonable costs and expenses.

18. LIMITATION OF LIABILITY AND EXCUSABLE FAILURE

18.1 LIMITATION OF LIABILITY

The Contractor's liability for damages to the State shall be limited to two (2) times the value of the Contract. The foregoing limitation of liability shall not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

The State's liability for damages to the Contractor shall be limited to the value of the Contract.

The parties agree that neither the Contractor nor the State shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. The foregoing limitation of liability shall not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

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18.2 EXCUSABLE FAILURE

Neither party will be liable for any default, damage or delay in the performance of its obligations under the Contract to the extent such default, damage or delay is caused by government regulations or requirements (executive, legislative, judicial, military or otherwise), power failure, electrical surges or current fluctuations, lightning, earthquake, war, water or other forces of nature or acts of God, delays or failures of transportation, equipment shortages, suppliers' failures, or acts or omissions of common carriers, fire; riots, civil disorders, rebellions or revolutions in any country; strikes or other labor disputes, embargoes; injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of such party; provided the non-performing party and its Subcontractors are without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans. In such event, the non-performing party will be excused from any further performance or observance of the obligation so affected for as long as such circumstances prevail and such party continues to use its commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay and provided further that such party promptly notifies the other party in writing of the inception of the excusable failure occurrence, and also of its abatement or cessation. If any of the above-enumerated circumstances substantially prevent, hinder, or delay Contractor's performance of the services for more than ten (10) business days, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State in its reasonable discretion, then at the State's option: (a) the State may procure the affected services from an alternate source, and the State shall not be liable for payment for the unperformed services under the Contract for so long as the delay in performance shall continue; (b) the State may terminate any portion of the Contract so affected and the charges payable there under shall be equitably adjusted to reflect those services terminated; or (c) the State may terminate the affected Statement of Work without liability to Contractor as of a date specified by the State in a written notice of termination to Contractor, except to the extent that the State shall pay for products and services provided through the date of termination. Contractor will not have the right to any additional payments from the State as a result of any excusable failure occurrence or to payments for services not rendered as a result of the excusable failure condition. Defaults or delays in performance by Contractor which are caused by acts or omissions of its Subcontractors will not relieve Contractor of its obligations under the Contract except to the extent that a Subcontractor is itself subject to an excusable failure condition described above and Contractor cannot reasonably circumvent the effect of the Subcontractor's default or delay in performance through the use of alternate sources, workaround plans or other means.

18.3 DISASTER RECOVERY

Contractor and the State recognize that the State provides essential services in times of natural or man-made disasters. Therefore, except as so mandated by Federal disaster response requirements, the State will receive priority service for repair and work around in the event of a natural or manmade disaster. The State will identify a priority list of those functions that must be returned to service as soon as possible following a disaster.

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19. TERMINATION BY THE STATE

The State may terminate the Contract without further liability or penalty to the State, its departments, divisions, agencies, offices, commissions, officers, agents and employees for any of the following reasons:

19.1 TERMINATION FOR CAUSE

- (a) In the event that Contractor breaches any of its material duties or obligations under the Contract (including a Chronic Failure to meet any particular SLA as defined in **Section 7.6**), which are either not capable of or subject to being cured, or are not cured within the time period specified in the written notice of breach provided by the State (such time period not to be less than thirty (30) calendar days), or pose a serious and imminent threat to the health and safety of any person, or the imminent loss, damage or destruction of any real or tangible personal property, the State may, having provided written notice of termination to Contractor, terminate the Contract in whole or in part, for cause, as of the date specified in the notice of termination.
- (b) In the event that the Contract is terminated for cause, in addition to any legal remedies otherwise available to the State by law or equity, Contractor shall be responsible for all costs incurred by the State in terminating the Contract, including but not limited to, State administrative costs, reasonable attorneys' fees and court costs, and any reasonable additional costs the State may incur to procure the services required by the Contract from other sources. Re-procurement costs shall not be considered by the parties to be consequential, indirect or incidental damages, and shall not be excluded by any other terms otherwise included in the Contract, provided such costs are not in excess of twenty-five percent (25%) more than the prices for such service provided under the Contract; provided, however, that any such costs recovered by the State under this paragraph shall otherwise be treated as damages recovered by the State for the purposes of **Section 18.1**.
- (c) In the event the State chooses to partially terminate the Contract for cause, charges payable under the Contract will be equitably adjusted to reflect those services that are terminated and the State shall pay for all services provided up to the termination date. services and related provisions of the Contract that are terminated for cause shall cease on the effective date of the termination.
- (d) In the event the Contract is terminated for cause pursuant to this section, and it is determined, for any reason, that Contractor was not in breach of Contract pursuant to the provisions of this section, that termination for cause shall be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties shall be limited to that otherwise provided in the Contract for a termination for convenience.

19.2 TERMINATION FOR CONVENIENCE BY THE STATE

The State may terminate the Contract for its convenience, in whole or part, if the State determines that such a termination is in the State's best interest. Reasons for such termination shall be left to the sole discretion of the State and may include, but not necessarily be limited to (a) the State no longer needs the services or products specified in the Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the

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services no longer practical or feasible, or (c) unacceptable prices for Additional Services requested by the State. The State may terminate the Contract for its convenience, in whole or in part, by giving Contractor written notice at least one hundred twenty (120) calendar days prior to the date of termination. If the State chooses to terminate the Contract in part, the charges payable under the Contract shall be equitably adjusted to reflect those services that are terminated. services and related provisions of the Contract that are terminated for cause shall cease on the effective date of the termination.

19.3 NON-APPROPRIATION

- (a) Contractor acknowledges that, if this Contract extends for several fiscal years, continuation of this Contract is subject to appropriation or availability of funds for this Contract. If funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available, the State shall have the right to terminate this Contract and all affected Statements of Work, in whole or in part, at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Contractor. The State shall give Contractor at least thirty (30)-calendar days advance written notice of termination for non-appropriation or unavailability (or such time as is available if the State receives notice of the final decision less than thirty (30) calendar days before the funding cutoff).
- (b) If funding for the Contract is reduced by law, or funds to pay Contractor for the agreed-to level of the services to be provided by Contractor are not appropriated or otherwise made available, the State may, upon thirty (30) calendar days written notice to Contractor, reduce the level of the services in such manner and for such periods of time as the State may elect. The charges payable under this Contract will be equitably adjusted to reflect any equipment, services or commodities not provided by reason of such reduction.
- (c) In the event the State terminates this Contract or reduces the level of services to be provided by Contractor pursuant to this Section 14.3, the State shall pay Contractor for all work-in-progress performed through the effective date of the termination or reduction in level, as the case may be, to the extent funds are available. For the avoidance of doubt, this Section 14.3 will not preclude Contractor from raising against the State in a court of competent jurisdiction, any claim for a shortfall in payment for services performed prior to the effective date of termination.

19.4 CRIMINAL CONVICTION

The State may terminate the Contract immediately and without further liability or penalty in the event Contractor, an officer of Contractor, or an owner of a 25% or greater share of Contractor is convicted of a criminal offense incident to the application for, or performance of, a State, public or private Contract or subcontract; convicted of a criminal offense, including any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for State of Michigan employees; convicted under State or federal antitrust statutes; or convicted of any other criminal offense which in the sole discretion of the State reflects upon Contractor's business integrity.

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19.5 APPROVALS RESCINDED

The State may terminate the Contract without further liability or penalty in the event any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services pursuant to Constitution 1963, Article 11, section 5, and Civil Service Rule 7-1. Termination may be in whole or in part and may be immediate as of the date of the written notice to Contractor or may be effective as of the date stated in such written notice.

19.6 RIGHTS AND OBLIGATIONS UPON TERMINATION

- (a) If the Contract is terminated by the State for any reason, Contractor shall (a) stop all work as specified in the notice of termination, (b) take any action that may be necessary, or that the State may direct, for preservation and protection of Deliverables or other property derived or resulting from the Contract that may be in Contractor's possession, (c) return all materials and property provided directly or indirectly to Contractor by any entity, agent or employee of the State, (d) in the event that the Contractor maintains title in equipment and software that is intended to be transferred to the State at the termination of the Contract, Contractor will transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables and other Developed Materials intended to be transferred to the State at the termination of the Contract and which are resulting from the Contract (which shall be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of such items included compensation to Contractor for the provision of warranty services in respect of such materials), and (e) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract.
- (b) In the event the State terminates the Contract prior to its expiration for its own convenience, the State shall pay Contractor for all charges due for services provided prior to the date of termination and, if applicable, as a separate item of payment pursuant to the Contract, for partially completed Deliverables, on a percentage of completion basis. All completed or partially completed Deliverables prepared by Contractor pursuant to the Contract shall, at the option of the State, become the State's property, and Contractor shall be entitled to receive equitable fair compensation for such Deliverables. Regardless of the basis for the termination, the State shall not be obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to services not actually performed for the State.
- (c) Reserved.
- (d) Upon a good faith termination, the State shall have the right to assume, at its option, any and all subcontracts and agreements for services and materials provided under the Contract, and may further pursue completion of the services under the Contract by replacement Contract or otherwise as the State may in its sole judgment deem expedient.

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19.7 TERMINATION ASSISTANCE

If the Contract (or any Statement of Work issued under it) is terminated for any reason before completion, Contractor agrees to provide for up to two-hundred seventy (270) calendar days after the termination all reasonable termination assistance requested by the State to facilitate the orderly transfer of such services to the State or its designees in a manner designed to minimize interruption and adverse effect. Such termination assistance will be deemed by the parties to be governed by the terms and conditions of the Contract (notwithstanding its termination) other than any terms or conditions that do not reasonably apply to such termination assistance. The State shall compensate Contractor for such termination assistance at the same rates and charges set forth in the Contract on a time and materials basis in accordance with the Labor Rates indicated within Contractors pricing section. If the Contract is terminated by Contractor under **Section 20**, then Contractor may condition its provision of termination assistance under this Section on reasonable assurances of payment by the State for such assistance, and any other amounts owed under the Contract.

19.8 RESERVATION OF RIGHTS

Any termination of the Contract or any Statement of Work issued under it by a party shall be with full reservation of, and without prejudice to, any rights or remedies otherwise available to such party with respect to any claims arising prior to or as a result of such termination.

19.9 END OF CONTRACT TRANSITION

In the event the Contract is terminated, for convenience or cause, or upon expiration, the Contractor agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. In the event of termination or the expiration of the Contract, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed 270 calendar days. These efforts shall include, but are not limited to, the following:

- (a) Personnel - The Contractor shall work with the State, or a specified third party, to develop a transition plan setting forth the specific tasks and schedule to be accomplished by the parties, to effect an orderly transition. The Contractor shall allow as many personnel as practicable to remain on the job to help the State, or a specified third party, maintain the continuity and consistency of the services required by the Contract. In addition, during or following the transition period, in the event the State requires the services of the Contractor's subcontractors or Contractor, as necessary to meet its needs, Contractor agrees to reasonably, and with good-faith, work with the State to use the services of Contractor's subcontractors or Contractor.
- (b) Knowledgeable Personnel. Contractor will make available to the State or a Third Party Provider knowledgeable personnel familiar with the operational processes and procedures used to deliver products and services to the State. The Contractor personnel will work with the State or third party to help develop a mutually agreeable transition plan, work to transition the process of ordering, shipping and invoicing equipment and services to the State.

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- (c) Information - The Contractor agrees to provide reasonable detailed specifications for all services needed by the State, or specified third party, to properly provide the services required under the Contract. The Contractor will also provide any licenses required to perform the services under the Contract.
- (d) Software. - The Contractor shall reasonably assist the State in the acquisition of any Contractor software required to perform the services under the Contract. This shall include any documentation being used by the Contractor to perform the services under the Contract. If the State transfers any software licenses to the Contractor, those licenses shall, upon expiration of the Contract, transfer back to the State at their current revision level.
- (e) Payment - if the transition results from a termination for any reason, the termination provisions of the Contract shall govern reimbursement. If the transition results from expiration, the Contractor will be reimbursed for all reasonable transition costs (i.e. costs incurred within the agreed period after Contract expiration that result from transition operations) as specified by the time and material rates within the contractor's pricing section.
- (f) Single Point of Contact. Contractor will maintain a Single Point of Contact (SPOC) for the State after termination of the Contract until all product and service obligations have expired.

19.10 TRANSITION OUT OF THE CONTRACT

- (a) In the event that the Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the Contractor agrees to perform the following obligations, and any others upon which the State and the Contractor agree:
 - (i) Cooperating with any Contractors or other entities with whom the State contracts to meet its needs as it relates to the described products and services described herein, for at least two hundred and seventy (270) calendar days after the termination of the Contract;
 - (ii) Reserved.
 - (iii) Providing the State with all asset management data generated from the inception of the Contract through the date on which the Contract is terminated, in a comma-delimited format unless otherwise required by the Program Office.
 - (iv) Reconciling all accounts between the State and the Contractor.
 - (viii) Allowing the State to request the winding up of any pending or ongoing projects at the price to which the State and the Contractor agreed at the inception of the project.
 - (ix) Reserved.
 - (x) Notifying all of the Contractor's subcontractors of procedures to be followed during the transition out phase.
 - (xv) Reserved
 - (xvi) Assisting in the execution of a parallel operation until the effective date of termination of the Contract (Not appropriate to this contract.)

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- (xvii) Answering questions regarding post-migration services; (Not appropriate to this contract.)
 - (xviii) Delivering to the State any remaining owed reports and documentation still in the Contractor's possession.
- (b) In the event that the Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the State agrees to perform the following obligations, and any others upon which the State and the Contractor agree:
- (i) Reconciling all accounts between the State and the Contractor.
 - (ii) Completing any pending post-project reviews.

20. TERMINATION BY THE CONTRACTOR

If the State materially breaches its obligation to pay Contractor undisputed amounts due and owing under the Contract in accordance with **Section 10**, or if the State breaches its other obligations under the Contract to an extent that makes it impossible or commercially impractical for Contractor to perform the services, and if the State does not cure the breach within the time period specified in a written notice of breach provided to the State by Contractor (such time period not to be less than thirty (30) calendar days), then Contractor may terminate the Contract for cause, as of the date specified in the notice of termination; provided, however, that Contractor must discharge its obligations under **Section 23.2** prior to any such termination.

21. TITLE

Title to equipment, accessories and devices leased or purchased under the Contract shall remain with the Contractor until the State makes final payment; at that time, title will pass to the State.

22. STOP WORK

22.1 ISSUANCE OF STOP WORK ORDER

The State may, at any time, by written stop work order to Contractor, require that Contractor stop all, or any part, of the work called for by the Contract for a period of up to ninety (90) calendar days after the stop work order is delivered to Contractor, and for any further period to which the parties may agree. The stop work order shall be specifically identified as such and shall indicate that it is issued under this **Section 22**. Upon receipt of the stop work order, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of the stop work order, the State shall either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order as provided in **Section 19** of the Contract.

22.2 CANCELLATION OR EXPIRATION OF STOP WORK ORDER

If a stop work order issued under this **Section 22** is canceled or the period of the stop work order or any extension thereof expires, Contractor shall resume work. The parties shall agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if: (a) the stop work order results in an increase in the time

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required for, or in Contractor's costs properly allocable to, the performance of any part of the Contract; and (b) Contractor asserts its right to an equitable adjustment within thirty (30) calendar days after the end of the period of work stoppage; provided that, if the State decides the facts justify the action, the State may receive and act upon a Contractor proposal submitted at any time before final payment under the Contract.

22.3 ALLOWANCE OF CONTRACTOR COSTS

If the stop work order is not canceled and the work covered by the stop work order is terminated for reasons other than material breach, such termination shall be deemed to be a termination for convenience under **Section 19.2**, and the State shall allow reasonable costs resulting from the stop work order in arriving at the termination settlement. For the avoidance of doubt, the State shall not be liable to Contractor for loss of profits because of a stop work order issued under this **Section 22**.

23. DISPUTE RESOLUTION

23.1 IN GENERAL

- (a) Any claim, counterclaim, or dispute between the State and Contractor arising out of or relating to the Contract or any Statement of Work shall be resolved as set forth herein.
- (b) For all Contractor claims seeking an increase in the amounts payable to Contractor under the Contract, or the time for Contractor's performance, Contractor shall submit a letter executed by Contractor's Contract Administrator or his designee certifying that (i) the claim is made in good faith, (ii) the amount claimed accurately reflects the adjustments in the amounts payable to Contractor or the time for Contractor's performance for which Contractor believes the State is liable and covers all costs of every type to which Contractor is entitled from the occurrence of the claimed event, and (iii) the supporting data provided with such an affidavit are current and complete to Contractor's best knowledge and belief.

23.2 INFORMAL DISPUTE RESOLUTION

- (a) All operational disputes between the parties shall be resolved under the Contract Management procedures developed pursuant to **Section 8.2**. If the parties are unable to resolve any disputes after compliance with such processes, the parties shall meet with the Director of Acquisition Services, DMB, or designee, for the purpose of attempting to resolve such dispute without the need for formal legal proceedings, as follows:
 - (i) The representatives of Contractor and the State shall meet as often as the parties reasonably deem necessary in order to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.
 - (ii) During the course of negotiations, all reasonable requests made by one party to another for non-privileged information reasonably related to the Contract will be honored in order that each of the parties may be fully advised of the other's position.

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- (iii) The specific format for the discussions will be left to the discretion of the designated State and Contractor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.
- (iv) Following the completion of this process within sixty (60) calendar days, the Director of Acquisition Services, DMB, or designee, shall issue a written opinion regarding the issues in dispute within thirty (30) calendar days. The opinion regarding the dispute shall be considered the State's final action and the exhaustion of administrative remedies.
- (b) This **Section 23.2** will not be construed to prevent either party from instituting, and a party is authorized to institute, formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or pursuant to **Section 23.3**.
- (c) The State will not mediate disputes between the Contractor and any other entity, except state agencies, concerning responsibility for performance of work pursuant to the Contract.

23.3 INJUNCTIVE RELIEF

The only circumstance in which disputes between the State and Contractor will not be subject to the provisions of **Section 23.2** is where a party makes a good faith determination that a breach of the terms of the Contract by the other party is such that the damages to such party resulting from the breach will be so immediate, so large or severe and so incapable of adequate redress after the fact that a temporary restraining order or other immediate injunctive relief is the only adequate remedy.

23.4 CONTINUED PERFORMANCE

Each party agrees to continue performing its obligations under the Contract while a dispute is being resolved except to the extent the issue in dispute precludes performance (dispute over payment shall not be deemed to preclude performance) and without limiting either party's right to terminate the Contract as provided in **Section 19 and 20**, as the case may be.

23.5 GOVERNING LAW

The Contract shall in all respects be governed by, and construed in accordance with, the substantive laws of the State of Michigan without regard to any Michigan choice of law rules that would apply the substantive law of any other jurisdiction to the extent not inconsistent with, or pre-empted by federal law.

23.6 JURISDICTION

Any dispute arising from the Contract shall be resolved in the State of Michigan. With respect to any claim between the parties, Contractor consents to venue in Ingham County, Michigan, and irrevocably waives any objections it may have to such jurisdiction on the grounds of lack of personal jurisdiction of such court or the laying of venue of such court or on the basis of *forum non conveniens* or otherwise. Contractor agrees to appoint agents in the State of Michigan to receive service of process.

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24. FEDERAL AND STATE CONTRACTUAL REQUIREMENTS

24.1 NONDISCRIMINATION

In the performance of the Contract, Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, physical or mental disability. Contractor further agrees that every subcontract entered into for the performance of any Contract or purchase order resulting here from will contain a provision requiring non-discrimination in employment, as herein specified, binding upon each Subcontractor. This covenant is required pursuant to the Elliot Larsen Civil Rights Act, 1976 Public Act 453, as amended, MCL 37.2101, *et seq.* and the Persons with Disabilities Civil Rights Act, 1976 Public Act 220, as amended, MCL 37.1101, *et seq.*, and any breach thereof may be regarded as a material breach of the Contract.

24.2 UNFAIR LABOR PRACTICES

Pursuant to 1980 Public Act 278, as amended, MCL 423.231, *et seq.*, the State shall not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled pursuant to section 2 of the Act. The United States National Labor Relations Board compiles this information. A Contractor of the State, in relation to the Contract, shall not enter into a Contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Pursuant to section 4 of 1980 Public Act 278, MCL 423.324, the State may void any Contract if, subsequent to award of the Contract, the name of Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of Contractor appears in the register.

24.3 DISCLOSURE OF LITIGATION

(a) Disclosure. Contractor must disclose any material criminal litigation, investigations or proceedings involving the Contractor (and each Subcontractor) or any of its officers or directors. In addition, each Contractor (and each Subcontractor) must notify the State of any material civil litigation, arbitration or proceeding which arises during the term of the Contract and extensions thereto, to which Contractor (or, to the extent Contractor is aware, any Subcontractor hereunder) is a party, and which involves: (i) disputes that might reasonably be expected to adversely affect the viability or financial stability of Contractor or any Subcontractor hereunder; or (ii) a claim or written allegation of fraud against Contractor or, to the extent Contractor is aware, any Subcontractor hereunder by a governmental or public entity arising out of their business dealings with governmental or public entities. Any such litigation, investigation, arbitration or other proceeding (collectively, "Proceeding") must be disclosed in a written statement to the Contract Administrator within thirty (30) calendar days of its occurrence. Details of settlements, which are prevented from disclosure by the terms of the settlement, may be annotated as such. Information provided to the State from Contractor's publicly filed documents referencing its material litigation will be deemed to satisfy the requirements of this **Section 24.3(a)**.

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- (b) Assurances. In the event that any such Proceeding disclosed to the State pursuant to this Section, or of which the State otherwise becomes aware, during the term of the Contract would cause a reasonable party to be concerned about:
- (i) The ability of Contractor (or a Subcontractor hereunder) to continue to perform the Contract in accordance with its terms and conditions, or
 - (ii) Whether Contractor (or a Subcontractor hereunder) in performing services for the State is engaged in conduct which is similar in nature to conduct alleged in such Proceeding, which conduct would constitute a breach of the Contract or a violation of Michigan law, regulations or public policy, then Contractor shall be required to provide the State all reasonable assurances requested by the State to demonstrate that: (A) Contractor and/or its Subcontractors hereunder will be able to continue to perform the Contract and any Statements of Work in accordance with its terms and conditions, and (B) Contractor and/or its Subcontractors hereunder have not and will not engage in conduct in performing the services which is similar in nature to the conduct alleged in such Proceeding.

24.4 COMPLIANCE WITH LAWS

Contractor shall comply with all applicable state, federal, and local laws and ordinances (“Applicable Laws”) in providing the services.

25. GENERAL

25.1 AMENDMENTS

The Contract may not be modified, amended, extended, or augmented, except by a writing executed by the parties hereto, and any breach or default by a party shall not be waived or released other than in a writing signed by the other party.

25.2 ASSIGNMENT

- (a) Neither party shall have the right to assign the Contract, or to assign or delegate any of its duties or obligations under the Contract, to any other party (whether by operation of law or otherwise), without the prior written consent of the other party; provided, however, that the State may assign the Contract to any other State agency, department, division or department without the prior consent of Contractor and Contractor may assign the Contract to an affiliate so long as such affiliate is adequately capitalized and can provide adequate assurances that such affiliate can perform the Contract. Any purported assignment in violation of this Section shall be null and void. It is the policy of the State of Michigan to withhold consent from proposed assignments, subcontracts, or novations when such transfer of responsibility would operate to decrease the State’s likelihood of receiving performance on the Contract or the State’s ability to recover damages.
- (b) Contractor may not, without the prior written approval of the State, assign its right to receive payments due under the Contract. In the event of any such permitted assignment, Contractor shall not be relieved of its responsibility to perform any duty imposed upon it herein, and the requirement under the Contract that all payments shall be made to one entity shall continue.

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25.3 ENTIRE CONTRACT; ORDER OF PRECEDENCE

- (a) The Contract, including any Statement of Work and Exhibits referred to herein and attached hereto, to the extent not contrary to the Contract, each of which is incorporated herein for all purposes, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, whether written or oral, with respect to such subject matter and as additional terms and conditions on the purchase order shall apply as limited by Section 2.6.
- (b) In the event of any inconsistency between the terms of the Contract and a Statement of Work, the terms of the Statement of Work will take precedence (as to that Statement of Work only); provided, however, that a Statement of Work may not modify or amend the terms of **Sections 12 through 23** of the Contract, which may be modified or amended only by a formal Contract amendment. In the event of an inconsistency between the terms and conditions of the Contract and any regulatory filing, the terms and conditions of the Contract will prevail. If necessary, Contractor, after the Effective Date, shall make a regulatory filing that shall include the rates and charges for service and any terms and conditions that affect the rates and charges paid by the State. These shall conform to those set forth in the Contract.

25.4 HEADINGS

Captions and headings used in the Contract are for information and organization purposes. Captions and headings, including inaccurate references, do not, in any way, define or limit the requirements or terms and conditions of the Contract.

25.5 RELATIONSHIP OF THE PARTIES (INDEPENDENT CONTRACTOR RELATIONSHIP)

The relationship between the State and Contractor is that of client and independent Contractor. No agent, employee, or servant of Contractor or any of its Subcontractors shall be or shall be deemed to be an employee, agent or servant of the State for any reason. Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants and Subcontractors during the performance of the Contract.

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25.6 NOTICES

Any notice given to a party under the Contract shall be deemed effective, if addressed to such party as addressed below, upon: (i) delivery, if hand delivered; (ii) receipt of a confirmed transmission by facsimile if a copy of the notice is sent by another means specified in this Section; (iii) the third (3rd) Business Day after being sent by U.S. mail, postage pre-paid, return receipt requested; or (iv) the next Business Day after being sent by a nationally recognized overnight express courier with a reliable tracking system.

State

State of Michigan
Office of Acquisition Services
Attention: Greg Faremouth,
Buyer Specialist
PO Box 30026
530 West Allegan
Lansing, Michigan 48909

Copy

State of Michigan
Department of Information Technology
Attention: Donald Stevens,
Director
105 West Allegan
Landmark Building
Lansing, Michigan 48933

Contractor

Professional Technical Development, Inc.
Mr. Karl Meier
President
3001 Coolidge Road, Suite 403
East Lansing, Michigan 48823

Either party may change its address where notices are to be sent by giving notice in accordance with this Section.

25.7 MEDIA RELEASES

Neither Contractor nor the State will make any news releases, public announcements or public disclosures, nor will they have any conversations with representatives of the news media, pertaining to the Contract, the services or the Contract without the prior written approval of the other party, and then only in accordance with explicit written instructions provided by that party. In addition, neither Contractor nor the State will use the name, trademarks or other proprietary identifying symbol of the other party or its affiliates without such party's prior written consent. Prior written consent of the Contractor must be obtained from authorized representatives.

25.8 REFORMATION AND SEVERABILITY

Each provision of the Contract shall be deemed to be severable from all other provisions of the Contract and, if one or more of the provisions of the Contract shall be declared invalid, the remaining provisions of the Contract shall remain in full force and effect.

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25.9 CONSENTS AND APPROVALS

Except as expressly provided otherwise in the Contract, if either party requires the consent or approval of the other party for the taking of any action under the Contract, such consent or approval shall be in writing and shall not be unreasonably withheld or delayed.

25.10 NO WAIVER OF DEFAULT

The failure of a party to insist upon strict adherence to any term of the Contract shall not be considered a waiver or deprive the party of the right thereafter to insist upon strict adherence to that term, or any other term, of the Contract.

25.11 SURVIVAL

Any provisions of the Contract that impose continuing obligations on the parties including the parties' respective warranty, indemnity and confidentiality obligations, shall survive the expiration or termination of the Contract for any reason. Specific references to survival in the Contract are solely for identification purposes and not meant to limit or prevent the survival of any other section.

25.12 COVENANT OF GOOD FAITH

Each party agrees that, in its dealings with the other party or in connection with the Contract, it shall act reasonably and in good faith. Unless stated otherwise in the Contract, the parties will not unreasonably delay, condition or withhold the giving of any consent, decision or approval that is either requested or reasonably required of them in order for the other party to perform its responsibilities under the Contract.

25.13 APPROVAL

The State assumes no liability for payment under the Contract or the terms of any Contract Change Notice or Statement of Work issued under the Contract until Contractor is notified in writing that the Statement of Work has been approved by the Office of Acquisition Services, or its authorized designee the DIT Training Administrator and, if required, the State Administrative Board and the Michigan Office of Attorney General. Execution of the Contract by State authorities indicates approval by the State.

25.14 PERMITS

Contractor shall obtain and pay any associated costs for all required governmental permits, licenses and approvals for the delivery, installation and performance of the services. The State shall pay for all costs and expenses incurred in obtaining and maintaining any necessary easements or right of way.

25.15 ENVIRONMENTAL PROVISION

(a) If, during Contract performance, the Contractor unexpectedly encounters a material, which is hazardous or suspected to be hazardous, the Contractor shall advise the Office of Acquisition Services immediately. The Contractor shall cease performance immediately and shall take

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measures to cover the exposed area, post warning signs, and cover any debris. The Contractor shall wait for further instruction from the Office of Acquisition Services before commencing work in the affected area. At all times, the Contractor shall comply with all applicable laws, rules, regulations, and guidance.

- (b) The Contractor shall assume full responsibility and liability for compliance with all applicable laws, rules, regulations, and guidance pertaining to the protection of workers, visitors, and persons occupying areas adjacent to affected sites. The Contractor agrees to indemnify the State against, and hold the State harmless from, any and all claims of failure to comply with applicable environmental, safety, or health laws or regulations on the part of the Contractor or any of its employees, Subcontractors, or agents. The State assumes no liability for any exposure of Contractor personnel to asbestos or other hazardous material. The Contractor will provide adequate insurance and assumes full responsibility for ensuring adequate protection of Contractor personnel against exposure to asbestos or other hazardous material while such personnel are performing work in support of this contract.

25.16 APPOINTMENT OF CONTRACTOR AS LIMITED AGENT FOR THE STATE

The State hereby appoints the Contractor as its limited agent to act on the State's behalf, to the extent necessary to provide the services throughout the term of the Contract. The State will notify all lessors, contractor, suppliers and appropriate third parties of such limited agency appointment as the State or the Contractor determines must be notified pursuant to a third party agreement, or any other agreement to which the State is a party, or applicable law. The State shall execute all necessary or appropriate letters of agency. Upon the expiration of any letter of agency issued hereunder, the Contractor shall immediately cease to act or have any authority to act as the State's agent.

26. RESERVED

27. RESERVED

28. RESERVED

29. MICHIGAN DELIVERING EXTENDED AGREEMENTS LOCALLY (MiDEAL)

Public Act 431 of 1984 permits the State of Michigan, Department of Management and Budget, to provide purchasing services to any city, village, county, township, school district, intermediate school district, non-profit hospital, and institution of higher education, community, or junior college. A current listing of approved program members is available on the State of Michigan, Department of Management and Budget, Office of Acquisition Services website at: <http://www.michigan.gov/doingbusiness/0,1607,7-146-6586-16656--,00.html>.

In order for non-state agencies to participate in the Michigan Delivering Extended Agreements Locally, the non-state governmental agency must enter into an agreement with the State of Michigan to become authorized to participate, thus ensuring that local units of government secure a greater return for the expenditure of public funds. It is the responsibility of the Contractor to ensure that the non-state agency is an authorized Michigan Delivering Extended Agreements Locally member before extending the Contract pricing. Orders received from non-approved local units of government shall not be considered unless the Office of Acquisition Services grants prior approval.

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It is the policy of the Office of Acquisition Services that the final approval to utilize the Contract in this manner must come from the Contractor. In such cases, the Contractor will supply Contract services and equipment at the established State of Michigan Contract prices and terms to the extent applicable and where available. Inasmuch as these are non-state agencies, all invoices will be submitted to and payment remitted by the local unit of government on a direct and individual basis.

To the extent that authorized local units of government purchase quantities of services and/or equipment under the Contract, the quantities of services and/or equipment purchased will be included in determining the appropriate rate wherever tiered pricing based on quantity is provided.

Commodities and/or services under the Contract will be supplied to State of Michigan departments and agencies, and authorized Michigan Delivering Extended Agreements Locally members in accordance with the terms and prices quoted to the extent applicable and where available.

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SECTION II

1.0 STATEMENT OF WORK

This Statement of Work (SOW) is subject to the terms and conditions as set forth in Section I and agreed to by the State of Michigan (State) and Professional Technical Development, Inc. (Contractor). This SOW defines the desktop application and technical training to be performed by the Contractor and describes:

- 2.0 The **Scope of Work** to be performed by the Contractor.
- 3.0 The **Goals and Expectations** of this Contract
- 4.0 The **Responsibilities** of the Contractor and the State
- 5.0 The **Planning** requirements for both parties
- 6.0 The **Commodities and Support** available from this Contract.
- 7.0 The **Processes and Methods** used by the State in conjunction with this Contract.
- 8.0 The **Service Level Agreement (SLA)** use to measure the Contractors performance.
- 9.0 The **Reports** required by the State from this Contract

2.0 SCOPE OF WORK

The purpose of this Contract is to furnish IT training services and materials necessary to provide an information technology-training program to the State. The Contractor will provide these services to all State Departments and Agencies within the Executive Branch, all State Departments and Agencies within the Legislative Branch and Judicial Branch, and to all members of the State's Michigan Delivering Extended Agreements Locally as defined in terms and conditions, Section 29.

The Contractor will provide high quality, cost effective training courses, certification programs, and progressive curricula on subjects relating to Desktop Software, Server and Network Management Software, and Application Development Software in active use by the State over the life of the Contract.

Over the life of this Contract, the State intends to shift from formal classroom-only and standalone CBT training to placing a greater emphasis on e-Learning and blended training. Many of the professional IT courses will be formed into IT job curricula and also will include diagnostic and prescribed types of learning options.

The State anticipates that the curricula and courses covered by this Contract will be driven by the State's IT Architecture; therefore, the courses and progressive curricula will periodically change over the life of this Contract. The State anticipates that this Contract will supply the Desktop Application *commodity product* training required by the DIT and its clients. The State further anticipates that this Contract would supply the *commodity product* technical training for the DIT employees on Servers and Network Management Software and for Applications Development Software, unless the State determines that training supplied by another State contract, by a Michigan inter-governmental consortium, or by Michigan governmental personnel is a more cost-effective alternative.

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At some time during the term of this Contract, the State may decide to incorporate the provisions of e-Commerce. The Contractor will provide an e-Commerce solution that will integrate this Contract into the State's financial systems. The cost will be borne, at that time, by both parties.

3.0 GOALS AND EXPECTATIONS

3.1 Relationship

The parties agree to establish and promote a collaborative relationship with the shared goal of providing superior management of the IT training needs on an enterprise and long-term basis.

The parties agree to provide knowledgeable personnel to all projects and activities for the duration of this Contract. Staff must be available on a timely basis so as not to delay implementation of the training program.

3.2 Manage Total Cost of Ownership

The Contractor will establish a dynamic pricing arrangement that fluctuates with the market trends within State managed programs. The State and the Contractor will manage acquisitions in order to reduce direct and hidden costs associated with information technology training. The Contractor will provide reports to help manage the cost of training and provide standardize information technology training throughout the State. Managing training costs on the State enterprise level should provide a better pricing structure.

3.3 Return On Investment (Measuring The Value)

The Contractor must supply a methodology for the State to measure the value of training. The Contractor needs to demonstrate the effectiveness of available training interventions, such as, but not limited to, representative focus groups, conducting surveys, the methods for compiling survey data, and interpreting the results. Under the direction of the DIT Training Administrator, the Contractor must offer a tailored measurement approach, including the most relevant data from the Contractor's Learning Management System, for assessing the Return of Investment for the training supplied through the Contract.

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3.4 Quality Training and Support

This Contract will emphasize value to the State and its other eligible partners. Value consists of quality and consistent training using the latest available technology. Training must be delivered timely, at fair market prices and with professional customer support.

3.5 Instructor Qualifications

The Contractor shall ensure that qualified instructors will be used to deliver training. Instructors and facilities for network training must be certified through the Software Manufacturers Qualification Process. Unless otherwise noted, classroom and instructor-led e-Learning instructors must have had prior experience conducting their assigned courses.

3.6 State Human Resource Management System (HRMN) Interface

The State's HRMN system is the central repository for all employee related data, including individual employee training history. The HRMN system is substantially the Lawson Insight System version 8.0.3, running on an HP UNIX platform and an Oracle database. The goal is to continuously update the data required by the standard Employee Training History and Career Management features of HRMN without requiring significant manual intervention and without confusing the users by the relationship between the HRMN system and the Contractor's Learning Management System(s). At minimum, the Contractor must supply a process for integrating course attendee data into the HRMN/Lawson employee history file.

3.7 Future HRMN Integration

The State may be implementing the HRMN/Lawson Career Management module by 2005. Because of the course reference links that later will be required by the HRMN Career Management database, the Contractor is expected to collaborate with the State to establish and maintain the Contractor's course and student reference links between the data elements required by the HRMN/Lawson Career Management module. The cost will be borne, at that time, by both parties.

4.0 RESPONSIBILITIES

4.1 Contractor:

The Contractor is expected to carry out the provisions of this Contract under the coordinated direction and control of the DIT Training Administrator. There should be a continuous liaison between the DIT Training Administrator and the Contractor and its Sub-Contractors to review progress and provide assistance in resolving any problems and/or concerns.

- Manage the Contract as a partnership with the Contractor.
- Provide the DIT Training Administrator information regarding new trends, which may be considered beneficial for the State.

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- Provide a Single Point Of Contact (SPOC) to call for scheduling problems, delivery issues and billing issues. This will be provided through a toll free line.
- Designate a Project Manager to oversee all IT related training.
- Maintain current pricing for all products on a weekly basis within the Product Web Catalog.
- Ensure that invoicing is correct and based upon the current price at the time of the order.
- Ensure that all commodity prices are current and competitive.
- Verify the receipt of a purchase order prior to the processing of any order covered under the Contract.
- Provide the technical requirements for all e-Learning courseware delivered to students including audio delivery via the Internet to learners as an alternative to a phone line.
- Maintain all current information, as directed by the DIT Training Administrator, on the Product Web Catalog web site.
- Participate in the annual two-day “Tech Days” forum that showcases technologies, support, and business practices provided through the MMITT. Additionally, the Contractor will sponsor and conduct training awareness events. These will initially be one-day events and will emphasize the learning services available within the MMITT training catalog. The event will also be used as a venue for communicating both upcoming and proposed learning innovations. All awareness event topics and formats must be pre-approved by the DIT Training Administrator.
- Monitor delivery dates, quality of services, client value of services, and other service level agreements.

4.2 State:

There should be a continuous liaison between the DIT Training Administrator and the Contractor and its Sub-Contractors to review progress and provide assistance in resolving any problems and/or concerns. The DIT Training Administrator is the SPOC for all Contract project communications. The DIT Training Administrator shall:

- Manage the Contract as a partnership with the Contractor.
- Provide a central point of contact and advocacy for DIT Clients.
- Monitor and track the performance of the Contractor to insure DIT Client satisfaction.
- Review and approve Product Web Catalog price increases and new product lines.

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- Administer Change Control events with the Project Manager, in accordance with the procedures described in this document.
- Coordinate Monthly Billings and Payment with the Contractor.
- Assist DIT clients in the development of a Statement of Work.
- Work with the DIT Clients to designate a Training Coordinator that will coordinate their agencies Desktop Application training requests and will serve as their agency's training liaison to the Contractor and the DIT Training Administrator.
- Coordinate quarterly focus groups with the Training Coordinators and the Contractor.
- The DIT Training Administrator may schedule classroom or e-Learning session visitations for monitoring purposes at no charge to the State. These findings may be shared with the Contractor and its Sub-Contractors.
- Serve as the liaison between the Project Manager and all other individuals participating in this Contract.
- Gain the participation and commitment of all personnel affected by the project, and escalate issues within the State as may be necessary to maintain timely progress.
- Regularly attend project status meetings.
- Obtain and provide information, decisions and approvals to ensure efficient and effective management of this Contract
- Resolve deviations from the project plan caused by State personnel or activities.
- Provide subject matter experts as needed to achieve project goals and schedules.
- Coordinate and manage the activities of State personnel assigned under a plan.
- Establish a method of communications for written information for this project in mutual agreement with the Project Manager.
- Provide timely approvals as proposed in the plans.
- Monitor and report project status on a regular basis to the DIT Administration.

5.0 PLANNING

The objective of this task is to establish a framework for communication, coordination, implementation and transition. The Project Manager shall have prime responsibility for planning all Contract start up activities, day-to-day Contract processes and the subsequent transitional activities at the end of this Contract.

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5.1 Communication Plan

The Project Manager is solely responsible for all project communications to the State and the Extended Purchasing Partners. The Project Manager shall:

- Prepare and maintain a project plan, roles and responsibility definition document, communications plan, risk management plan and an issue management process
- Measure and evaluate progress against the project plan
- Track issues and monitor closure
- Identify project risks and containment actions
- Coordinate and manage the activities of the Contractor and Sub-Contractor project personnel
- Resolve deviations from the Project Plan with the Training Administrator
- Administer Change Control events with the Project Manager, in accordance with the procedures described in this document.
- Regularly attend status meetings.
- Prepare and submit weekly Status Reports

5.2 Implementation Plan

The Implement Plan should include the following tasks:

- Communication Plan
 - DIT
 - Contractor
 - Extended Purchasing Partners
 - Define Process for Authorizing “News” Updates
- Define Resource requirements for implementation for State and Contractor
 - Subject Matter Experts
 - Implementation Team
- Single Point of Contact (SPOC) requirements
- Web Catalog Requirements
 - Web Catalog Security
 - Web Catalog Views
 - Web Catalog Design
 - Adhere to the State of Michigan “Look and Feel” Standards
 - Testing Plan
 - Training
- Procurement Processes
 - Order Process
 - Order Approval
 - Order Status
 - Invoice Process

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- Define Request to Add (RTA) process
- Define Statement of Work Process
- Define Reporting Requirements, including HRMN interface and importing of data generated from this Contract and historical data.
- Service Level Agreements (SLA)
- Define Escalation Process for all Contract issues
- Define process for Security Background Checks of Contractor staff.
- Define Training Requirements
 - Web Catalog
 - SPOC
 - Procurement Process Changes
- Schedule Meetings

5.3 Deliverables

5 business days after Contract execution, the Contractor shall deliver the following:

- Responsibility matrix
- Communication Plan
- Team members identified to define web catalog requirements
- Risk assessment and mitigation plan

20 business days after Contract execution, the Contractor shall deliver the following:

- Detailed work plan (Included as an exhibit to the contract)
- Resource Requirements
- Risk assessment and mitigation plan
- Present phased-in design for the web catalog

5.4 Steady State Plan

- Communication Plan
 - DIT
 - Contractor
 - Extended Purchasing Partners
- Define Resource requirements for on-going administration
 - Subject Matter Experts
 - Contract Administration Team
- Web Catalog Maintenance
 - Web Catalog Security
 - Web Catalog Views
- Reporting Process, including the HRMN interface process.
- Management of Service Level Agreements (SLA)
- Contract Quality Control Process

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- Contract Change Control Process
- Pricing Review Process
- Schedule Meetings

5.5 Continuous Improvement Plan

- Re-evaluate the abbreviated dynamic pricing model.
- Evaluate new IT training options available to the State.
- Evaluate client satisfaction with training, support and Contract terms.

5.6 Transition Plan - end of the Contract

The Contractor or its designee shall comply with the provisions of Section 19 of the terms and conditions of this Contract.

6.0 COMMODITIES AND SUPPORT AVAILABLE IN THIS CONTRACT

6.1 Training Types

The Contractor must include a provision for *tailoring* the commodity courses supplied by this Contract to accommodate the prescribed training needs of the State's employees. This course *tailoring* must include a provision for developing special e-Learning experiences or courses that address the unique operational needs of the DIT and its clients.

The Contractor must provide a complete array of high quality and highly effective contemporary training methods. These methods shall include, but are not limited to *Formal Classroom* training, *Self-Paced e-Learning*, and *Instructor-Led e-Learning*. The Contractor must offer the student the option to take the very same commodity course (i.e. common course content) via either Formal Classroom, Self-Paced e-Learning, Instructor-Led e-Learning, or via a pre-defined blend of these delivery modalities. The Contractor shall supply all student materials at no additional cost to the State for all *commodity* training delivery modalities supplied.

6.2 Tailored IT Training

The State will have the option of requesting certain types of Tailored IT Training through a Statement of Work process to the Contractor. Materials for tailored classes shall be factored into the Contractor's unit rates for tailoring training based on specifications in the Statement of Work. The Contractor must describe its process and unit pricing model for quoting IT training situations that cannot be effectively addressed by the Contractor's *commodity product* IT courses. The Contractor must further supply a description of the support required by the DIT or by the DIT Client in the development of a tailored course, including subject-matter expertise, materials, approvals, etc.

It is presumed that the Contractor may charge different rates depending on the complexity of the learning content required by the DIT or by a DIT client. At minimum, the Contractor must detail its process and rates for pricing the following types of tailored services:

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- Tailored content and delivery of a commodity product course into a special class session for groups of State students or as a Train-the-Trainer session.
- On-site subject matter mentoring service to the DIT teams or key State employees.
- Special purpose IT e-Learning content development the Contractor will deliver to the State, e.g. basic interactive text and graphics only, or content that includes advanced interactive or simulation techniques with the use of advanced multimedia.

6.3 Information To Be Provided About Supplied Courses

- Title of each course that makes up progressive curricula.
- Training performance objectives to be achieved for the course/curricula.
- The processes put in place by the Contractor to ensure the suitability of the student for the course, prior to the student taking the course; and the training needs assessment software and/or services supplied by the Contractor.
- Accreditation for a certification award, if any, for which the course is designed to prepare students, and the name of the awarding body. (Describe for which technical certifications you are a manufacturer authorized testing facility).
- The method for evaluating satisfactory completion of the courses and the conditions for the awarding or withholding of completion certification.
- The syllabus of the course indicating the emphasis placed on each section, including practical work.
- Core subject matter content of the course.
- Duration of the course and its starting and finishing times.
- Estimated study time required to complete the course.
- Training methods used and indication of class size for each method.
- A profile of the student for whom the course is designed, including prerequisite and/or desirable prior experience.
- Any rules governing student conduct while attending the course such as dress code.
- Any practical work the student must carry out, including a statement of the required and available equipment or resources.
- The training or learning models and strategies that are the foundation for the design of the course or group of courses.
- The need, if any, for face-to-face or hands-on training in addition to usage of the materials provided.

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- Materials and equipment that need to be made available separately by the State to students, including books, software packages, lab PC's, telephones, headsets, etc.; and the technical capabilities required for installation of the courses on the student's own PC and network, including minimum network bandwidth, and any other minimum system requirements such as processors, operating systems, browsers, plug-ins, screen resolutions, required memory, hard disk space, or sound capabilities.
- The availability and duration of post-course student support, whether online or by other means and the response times to be expected after making a request.
- Any requirement for student support to be provided by the State.
- The facilities provided for collaboration between students, whether on-line, by telephone, or other means.
- Any facilities for learning management, including registration, student progress tracking, and reporting, supplied with the courses.
- Detailed course delivery methods that the Contractor will supply to State employees (i.e., *Formal Classroom* training, *Self-Paced e-Learning*, *Instructor-Led e-Learning*, blended content, other).
- Number of students who can access the course simultaneously.
- Other information including details of subject matter experts, writers, and other key personnel that will be used in the development or tailoring of courses, or in providing student support.
- Detailed process for how the quarterly schedule for *Formal Classroom* training, *Instructor-Led e-Learning* and Blended Value-Add training will be established.

6.4 Training Support

As requested by the DIT Training Administrator, the Contractor will supply, at no charge, subject matter experts representing the areas of technical training in which they are able to advise and assist various DIT curriculum development teams in strategizing and defining progressive technical curricula. The Contractor will integrate the documentation of such defined curricula, or sequential course tracks, into the Product Web Catalog web site. Wherever practical, such curricula will be represented on the Contractor's web site in an easy to comprehend, graphical, flow chart like format.

6.5 Training Facilities

The Contractor is expected to offer classroom-style, instructor-led training as one of the available training options. As such, training facilities for classroom style training must be supplied by the Contractor and located within a twenty-mile radius of the metropolises of Lansing, Grand Rapids and Detroit. Training must also be provided in Contractor supplied facilities for each of the State zones as defined in Appendix 2.4.12A. Each of these training facilities shall provide a complete workable workstation for each attending student. Each of these facilities must further supply reasonable accommodation for accessibility to buildings and facilities by individuals with

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disabilities as defined under the Americans with Disabilities Act (ADA). The State does not expect the Contractor to restrict its class attendance to only include students who are State employees, unless the course is conducted in a State facility, or unless the State has purchased a full class.

7.0 PROCESSES AND METHODS

7.1 Procurement Process

The Contractor will implement a procurement process that will provide the State convenient scheduling of classes. Contractor's solution will position the State for the future use of leading edge e-commerce functions that will integrate with the State's systems and further streamline the process, providing significant administrative cost savings.

Procurement process goals and objectives:

- Web-based, self-service purchasing environment that extends product selection and order initiation to DIT employees and DIT Clients.
- Industry standard "shopping cart" commonly found in consumer Web sites.
- Web page login with unique features based upon State specified controls specific to job functions.
- Ability to communicate "News-like" information on the MMITT web page to improve communication with DIT Clients.
- Ability to integrate to the State's enterprise systems, such as MAIN.
- Online help on how to use the procurement process.

7.2 Product Web Catalog

The Contractor is responsible for providing a secure web-based Internet site. The State will work with the Contractor to determine the requirements for the Product Web Catalog including access levels, views, and appropriate security. The State will provide hot links to the Contractor's Product Web Catalog on its IT training oriented web portals, such as DITservice, TechTalk, and HRMN.

7.3 Web-Based Enrollment Services

The IT training catalog for the State will need to be updated and organized in a manner that reduces unnecessary course duplications; removes courses that represent products or versions that the State no-longer actively supports; and reduces confusion about which course(s) should be taken before another related courses, i.e., organizing the catalog into a progressive type of curricula or product learning tracks that identify prerequisite and complementary courses.

In addition to its metropolitan training sites, the Contractor must maintain and publish, on a State designated web site, a list of the readily available and easily accessible locations within the State of Michigan or in State of Michigan Government facilities where *Self-Paced e-Learning*, *Instructor-Led e-Learning*, and *Formal Classroom* sessions can be scheduled and conducted. The State will supply the Contractor with the information about the State facilities. It is anticipated that most e-Learning will take place within a State facility.

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The Contractor must create and maintain a web-based enrollment services that complies with the look and feel standards of the State's www.michigan.gov web page environment.

The Contractor is responsible for providing a courseware management and delivery system with a comprehensive reference library for all courses and curricula offered through this Contract. This includes, but is not limited to, an electronic web-based curricula, course catalog, and course enrollment service via the public Internet for all training and support available within this Contract.

The Contractor must provide business and web-based procedures for the handling of student registration, student confirmation, class size, and class cancellation or postponement. This enrollment service must include an electronic registration confirmation and cancellation notification system.

The Contractor is to detail its proposed process/procedures for how these training administration services will be supplied to and interact with the State's IT training clients and training business administrators via the web. The final version of these procedures must be collaboratively developed and then approved by the DIT Training Administrator. The Contractor must maintain detailed documentation of these business procedures and publish them on the designated web site.

The Contractor must supply an electronic assessment and performance support system via the public Internet for the *commodity product* types of courses included in this Contract. This Pre-Assessment will serve as a method for a student to determine the level of course he or she is best suited; diagnose the specific topics that the student needs to improve; and provide a baseline for conducting a post-training assessment of the effectiveness of the training.

When the course catalog lists a course as being deliverable via all three delivery modalities (i.e., an Instructor-Led Classroom, Instructor-led e-Learning, and Self-Paced e-Learning), and, there are variances in the content between the delivery modalities for that course, the Contractor will supply documentation within the course catalog that notes the differences in the delivered content between the course's modalities.

7.4 Order Approval Process

The procurement solution will incorporate an automated approval process as directed by the State. The platform will have an integrated approval workflow management system designed specifically to facilitate the electronic request and approval process. Requestors wishing to select a class will choose their class or courses from either a searchable State approved web catalog incorporating all modalities of delivery, or where applicable, via indexed web pages of State approved technical curricula or certification tracks. Requestors can select courses in a "shopping cart" model. Upon check-out, requestors will be required to submit the student's name, employee ID, email address, and agency, as well as other information as mutually agreed upon by the Contractor and the State. The requestor will then be required to select the name of the requestor's local Training Liaison from a list of Training Liaisons for that agency. This request will generate an email to the selected Liaison, whereupon the selected Liaison will review the request on a Web-based review page. The Liaison will approve the request in part or in whole by supplying the number of the agency-initiated Purchase Order with the approval. The Liaison's approval will inform the PTD Team of the pending class request. The PTD Team will

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enroll that student when a valid Purchase Order number has been obtained from the Agency Training Liaison. Further, the Liaison's approval will generate an email to the student indicating the status of the request. As seats are reserved in a class, the reserved seats will be reflected on the web site in a timely manner.

The Training Liaison profiles will be managed through a "Training Liaison Registration and Management Page." The DIT Training Coordinator or designees will be able to create primary Liaisons and sub-Liaisons through this web page as needed to handle request demand.

7.5 Order Status

The procurement solution will provide the State with the ability to quickly and easily determine the status of any order at any time. This will be done through the Training Liaison Review Page. Training Liaisons will be able to view and review all training requests directed to them and determine their status. When a Training Liaison approves or disapproves a class, an email will be sent to the required parties. The system will automatically generate e-mail notifications to multiple e-mail addresses when a user's order changes status. These e-mails can be generated at multiple points in the process and the Contractor will customize them to meet the needs of the State.

The following features will highlight the Training Liaison Review Page:

- Track order status easily on the MITT portal page
- Track requisition status through approval process as a future goal
- Track orders and promise dates
- Change or cancel orders for designated Staff
- View complete order history
- E-mail alerts to keep users informed
- Access complete online returns process

7.6 Request To Add (RTA) Process

DIT is the owner of the RTA process for this Contract. All requests will initiate with the DIT Training Administrator for processing. Following evaluation by the DIT Training Administrator, approved RTA requests and associated documentation will be forwarded to the Contractor for quoting. Contractor must respond within five business days by providing a quote to the request. If the price quote or offering is not acceptable to the DIT Training Administrator, the State may purchase outside the Contract. If approved, purchase may be a one-time buy or included as a Contract item in which case the Contractor shall include the item in the Product Web Catalog within five business days.

7.7 Exception Process to the State Standards

The exception process is a method by which DIT is able to receive and process requests from Executive Branch clients for exceptions to the State standards. DIT will, after its review, schedule a meeting to be held within five business days involving the appropriate DIT personnel, Contractor and/or the requestor to approve, deny, or modify the request.

Approved Request: The Contractor will have five-business day's time to research and return the quote to DIT.

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Denies Request: The DIT Training Administrator will draft a response as to why the request was denied and inform the requestor.

Modify Request: The Contractor will have two-business days to research and return the quote to DIT.

7.8 Statement Of Work (SOW) Process

Any custom class or special course must be obtained through the SOW process (see Appendix 2.0.11 A for a sample of the form). The SOW is submitted to the DIT Training Administrator for review. If approved, the DIT Training Administrator forwards the SOW to the DIT Contracts and Procurement Services who in turn issue the completed SOW to the Contractor. The Contractor's response to the DIT Training Administrator must be in writing, signed and include a price valid for 20 business days. The proposed solution will be submitted to DIT Contracts and Procurement Services in ten (10) business days, reviewed and, if acceptable, the DIT Contract and Procurement Services will submit it to the DIT Client for signature.

Unless other arrangements have been mutually agreed upon between the DIT Training Administrator and the Contractor, the Contractor shall provide all materials; computer support services and equipment necessary to complete each approved SOW.

Analysis and presentation work performed by the Contractor -- for the purpose of developing quotes or advising the State on a course of action -- will not be chargeable.

7.9 Single Point of Contact (SPOC)

The Contractor will provide a SPOC for the DIT and the Michigan Delivering Extended Agreements Locally authorized personnel to call on all issues germane to this Contract. Service will be provided through a toll free line to the State and the Michigan Delivering Extended Agreements Locally clients and the SPOC will be available during normal business hours. The Contractor shall have a process in place where the State can escalate Contract issues or service delivery issues.

7.10 Escalation Process

The Contractor must have a management support plan that provides for the orderly escalation of Contract issues to the next highest level for resolution. As a part of the problem escalation process, the Contractor shall have a written procedure to notify the State at regular intervals of the progress made in resolving problems.

The State will work with the Contractor to define and improve the escalation process and the escalation metrics.

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7.11 Dynamic Catalog and Associated Pricing

The Contractor is responsible for maintaining the Product Web Catalog. Approval of all training commodities appearing in the Product Web Catalog is the responsibility of the DIT Training Administrator. The following guidelines are offered to assist the Contractor preserve the Product Web Catalog:

- **Price decrease** – the DIT Training Administrator will update commodities displayed in the Product Web Catalog immediately and without prior approval.
- **Price increase** - the change must be reviewed and approved by the Training Administrator before amending the Product Web Catalog.
- **Change in State custom/standard** - upon notification by the DIT Training Administrator that a training course is no longer required, the obsolete product will be removed from the Product Web Catalog immediately.

Any approved changes, revisions and additions to the Product Web Catalog completed in a given month must appear in the Contractor's monthly report to the DIT Training Administrator. Report format and content are detailed under a separate section.

7.12 Invoicing Process

In addition to the monthly detailed invoice submitted to each agency having student representation during the invoice period, the Contractor shall also submit a monthly summary invoice to the DIT Training Administrator and contain the follow information.

- The original participant roster with the actual participants' signatures or initials or comparable validation of student enrollment/attendance.
- The participants' evaluation data and/or forms.
- A summary of the evaluations, including the averages of the numerical ratings, as well as a summary of any written comments.

Further discussion of this topic appears in the terms and conditions Section 10.2.

7.13 Pricing

The Contractor shall provide all-inclusive pricing for classes. All-inclusive prices for classes should incorporate travel, shipping, materials and a project manager who will be responsible to provide assistance to the DIT Training Administrator. The all inclusive pricing should also incorporate the expenses the Contractor may incur when it is necessary for a class to be tailored, i.e., when teleconferences or face-to-face meetings may be required to assess and identify specific departmental issues and needs, and where training materials must be modified in order to satisfy their training requirements. The Contractor and the DIT Training Administrator will mutually agree upon the incremental additional cost of training materials for large Formal Classroom sessions where class size exceeds normal standards. For "tailored training" the class limit size will be negotiable between the Training Administrator and the Contractor.

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Otherwise, the Contractor must bear the cost of all training materials. All training materials such as booklets, handouts, etc., must be delivered to the training site in time for the session. The Contractor is also responsible for returning any excess training materials. The DIT will not be responsible for storing, securing, or the return shipment of any materials. Classroom pricing must take into account that most classroom training will be conducted in the Lansing, Detroit and Grand Rapids area but sessions will also be held in other parts of the State, some quite distant from Lansing.

Classes may be retaken without charge to the State provided: class seats are still available 5 calendar days prior to the scheduled date of the course; and the same version of the course is still being taught. The student retaking the course is required to bring back all course materials from their previous class. To prevent potential abuse of this provision, the Contractor must include a method in the Contractor's enrollment process for identifying and reporting trends of students who retake or fail to attend a course.

7.14 Cancellations / Postponements

For canceled or rescheduled classes, enrolled students shall receive electronic notice five business days prior to the scheduled date of such class. At no cost to the State, students may cancel no later than five business days prior to the class. For late student cancellations, the State may be liable for the per student cost where the cancellation causes the enrollment to drop below an agreed upon minimum requirement.

7.15 Course and Instructor Performance Rating

Instructor and course performance will be based on the evaluations completed by the students at the end of the training session. The performance rating will have a 5-point scale; with 5.0 being the best score. The Contractor is required to deliver training courses that at least 85% of the students in each class evaluate the class session a positive overall rating average of 4.0 to 5.0 on a 5-point scale. The DIT Training Administrator must approve the evaluation tool. Detailed student rating data (including individual comments) must be available in a format that can be easily loaded into a database or spreadsheet, such as Microsoft Access or Excel, where it will be formatted, sorted, and reported as needed by the State. All evaluations for e-Learning courses must be conducted electronically.

Average performance scores less than 4.0 will result in the DIT Training Administrator scheduling a problem-solving conference with the Contractor and instructor. The DIT Training Administrator and Contractor will both continue to monitor the instructor's performance until an average score of 4.0 or above is obtained. An average score of 3.49 or less is considered substandard and will result in immediate action by the DIT Training Administrator. If a resolution between the DIT Training Administrator, Contractor, Sub-Contractor, and instructor is determined for resolving the substandard performance; and subsequently, substandard performance ratings continue, the State may require the instructor be replaced, and/or the contract for the course in question may be cancelled.

For multi-day formal classroom courses, the instructor will conduct short, interim evaluations at the end of each class day. This feedback is to be used by the instructor to guide or adjust his or her classroom management strategy for the remaining days of the class. The Contractor with the

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approval of the DIT Training Administrator will develop the questions and format of this abbreviated daily evaluation.

7.16 Quality Assurance (Measuring The Learning)

The Contractor must provide access to electronic Pre-test/Pre-Assessment tools for all supplied *commodity product* training courses at no additional charge. Pre Assessments will help indicate where the student may need remedial instruction to attain the desired skill level. The Pre-Assessment will assist each student in identifying the most appropriate course level and course delivery method.

Pre Assessments will also supply a base-level benchmark for quantifying the impact of training received. As such, electronic Post-Assessment will also be available from the Contractor to determine the learning that has taken place after completing the course. This Post-Assessment could also be conducted several weeks or months after training. The results of these assessments, in statistically significant detail, will be electronically supplied to the State via a mutually acceptable process and time interval.

The State may audit any course in accordance with Section 8.8 of the terms and conditions and without charge to the State.

7.17 Process For Handling Dissatisfaction

Instructor and course performance is based on a number of criteria. These include but are not limited to; the evaluations completed by the students at the end of a training session, instructor reports turned in by each instructor immediately following each training session, comments from Training Liaisons and/or students after the student has returned to their normal job duties. The training evaluation form used by students immediately following each training was created by and approved by the Master Contract Training Coordinators in conjunction with all training vendors on the EUCN contract January 2002.

Several PTD staff constantly review both instructor reports and student evaluations. Comments from Training Liaisons are solicited on an ongoing basis. All students and Training Liaisons are given contact information upon registering for any training and upon completion of each course, for any input they may have during and after any training. All members of the PTD Technology team encourage comments, questions, concerns and constructive criticism from the students and liaisons.

If any class evaluations from the students are below a 4.0 for any of the questions on the evaluation, PTD Technology's Customer Relations Manager contacts the student and/or the Agency Training Liaison to follow up on their dissatisfaction. At this point the student and/or the Agency Training Liaison and the PTD Technology Customer Relations Manager will come to an agreement for resolution of the issue. If an agreeable resolution between the PTD Technology and the student and/or Training Liaison cannot be reached, PTD Technology would then contact DIT Training Administrator for assistance.

Detailed student rating data, including individual comments are available as needed by the State. Quarterly training evaluation reports will be electronically available to the agreed upon audience by PTD Technology's Customer Relations Manager at the end of each quarter. The quarterly average of the training evaluations for all the vendors of the PTD Training Team will be posted in the Web Catalog.

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8.0 SERVICE LEVEL AGREEMENT (SLA) METRICS

The Service Level Metrics will be tied to the liquidated damages section of the Contract Terms and Conditions (7.3). The Contractor shall meet all of the SLA's identified below, on a quarterly basis. If the Contractor fails to meet the SLA's on a quarterly basis, the State shall apply penalties to the Contractor, per Section 7.3 of the Terms and Condition. If the Contractor fails to meet any of the SLA's in two consecutive quarters in addition to the penalties applied per Section 7.3 of the Terms and Conditions the Contractor will also follow the procedures indicated within Section 7.6 in the Terms and Conditions.

8.1 Delivery

The Contractor must deliver training courses via the most cost-effective contemporary methods that will lead to receiving a positive rating (4.0 to 5.0 on a 5-point scale) by 85% of the students that take the named class. Instructor and course performance will be based on the evaluations completed by the students at the end of the training session. The performance rating will have a 5-point scale; with 5.0 being the best score.

The Contractor must implement a program to successfully enable a 90% or better return of the students completing and turning in their course and instructor evaluations.

8.2 Statement of Work

The Contractor is expected to deliver a complete proposal with price to the State within 10 business days after submission at least 95% of the time.

8.3 Product Web Catalog SLA'S

The Product Web Catalog furnished by the Contractor will be available 99.9 percent of the time as measured Monday through Friday 7:00 AM – 6:00PM. Compliance with this SLA must be reflected in the Contractor's quarterly report to the State.

9.0 REPORTS

The Contractor must provide a variety of best practice reports and detailed downloadable data that will enable the State, and the Contractor, to more effectively manage the quality, value, and logistics of the training supplied. Electronic data transfer elements and download frequency shall be agreed upon between the Contractor and the DIT Training Administrator. At minimum, a monthly download to the designated State of Michigan system will be required. Select data elements may require more frequent updates, depending on the time sensitive nature of the data.

At minimum, the following reports shall be supplied to the State via the Contractor's designated web site. The data for these Contractor-supplied reports shall be kept current within 10 business days after the completion of the most recent class, regardless of location. The Contractor and the DIT Training Administrator may request additional reports as mutually agreed upon.

- Pupils trained by class. A comprehensive list of all classes offered under this Contract displaying counts relative to attendees, cancellations, no shows and reschedules.

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- Pupils trained by agency. A comprehensive list of all agencies displaying counts relative to attendees, cancellations, no shows, and reschedules. In addition to this summary version, a detailed version of this report is to be available to assist the State and the Contractor with identifying and addressing employee-specific problem situations or trends.
- Pupils and classes by zone. A comprehensive list of all zones displaying counts relative to classes held, attendees, cancellations, no shows, and reschedules. Please refer to Appendix 2.4.12.A.
- Quarterly and annual training cost breakdowns by course, by agency, and by zone.
- Individual student registration and course completion data transferred to the student's history file within the State's HRMN system.

The Contractor will supply the DIT Training Administrator and the DIT Service Center with summary statistics that report the number, nature, time frame, and source of support calls made by State employees to the Contractor's Help Desk(s). More detailed information from the Contractor's contact management system will be selectively supplied to the State, as needed.

9.1 Format For Contract Deliverables

Deliverables shall be provided in both hard copy and softcopy formats in accordance with the State's current applicable standards. The current software standard is the Microsoft Office 2000 Suite of products.

Michigan Master Information Technology Training Contract
For Desktop and Technical Training

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Michigan Master Information Technology Training Contract

For Desktop and Technical Training

SECTION III APPENDIX A

Appendix 2.0.11 A

DEPARTMENT OF INFORMATION TECHNOLOGY IT SERVICES STATEMENT OF WORK

Project Title:	Period of Coverage:
Requesting Department:	Date:
Agency Project Manager:	Phone:
DIT Contract(s) Liaison:	Phone:
Brief Description of Services to be provided:	
BACKGROUND:	
PROJECT OBJECTIVE:	
SCOPE OF WORK:	
TASKS:	
Technical support is required to assist with the following tasks:	
DELIVERABLES:	
Deliverables will not be considered complete until the Agency Project Manager has formally accepted them. Deliverables for this project include:	
PROJECT CONTROL AND REPORTS:	
A bi-weekly progress report must be submitted to the Agency Project Manager throughout the life of this project. This report may be submitted with the billing invoice. Each bi-weekly progress report must contain the following:	
<ol style="list-style-type: none">1. Hours: Indicate the number of hours expended during the past two weeks, and the cumulative total to date for the project. Also state whether the remaining hours are sufficient to complete the project.2. Accomplishments: Indicate what was worked on and what was completed during the current reporting period.3. Funds: Indicate the amount of funds expended during the current reporting period, and the cumulative total to date for the project.	

Michigan Master Information Technology Training Contract

For Desktop and Technical Training

SPECIFIC DEPARTMENT STANDARDS:

Agency standards, if any, in addition to DIT standards.

PAYMENT SCHEDULE:

NOTE: Payment can be based upon:

- **Time and Materials**
- **Satisfactory acceptance of each Deliverable**
- **Satisfactory acceptance of each Milestone (major part of the Contract)**
- **Satisfactory Final Acceptance at conclusion of the Contract.**

Payment will be made on a [Insert one from above] basis. DIT will pay contractor upon receipt of properly completed invoices, which shall be submitted, to the Project Manager not more often than monthly. All invoices should reflect actual work completed by payment date, and must be approved by the Agency Project Manager prior to payment. The invoices shall describe and document to the Project Manager's satisfaction a description of the work performed, the progress of the project, and fees. When expenses are invoiced, provide a detailed breakdown of each type.

Payment shall be considered timely if made by the DIT within thirty (30) days after receipt of properly completed invoices.

EXPENSES :

NOTE: Expenses are optional. Do not include Expenses paragraph below if expenses are not allowable. If allowable, include only expenses, which are appropriate for the Contract(s). Choose one of the following:

In the event it is necessary for Contractual staff to travel for this project, the project manager must obtain prior approval. Additionally, travel charges will only be reimbursed at current state-authorized rates as outlined by DMB guidelines (<http://www.michigan.gov/dmb/1,1607,7-150-9141--00.html>.) and must be accompanied by actual receipts. Travel time will not be reimbursed.

OR

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

PROJECT CONTACTS :

The designated Agency Project Manager is:

Name

Department

Area

Building/Floor

Address

City/State/Zip

Phone Number

Fax Number

Email Address

The DIT Contract(s) Administrator for this project is:

Michigan Master Information Technology Training Contract

For Desktop and Technical Training

Name

Michigan Department of Information Technology

Building/Floor

Address

City/State/Zip

Phone Number

Fax Number

Email Address

AGENCY RESPONSIBILITIES/ASSUMPTIONS:

LOCATION OF WHERE THE WORK IS TO BE PERFORMED:

EXPECTED CONTRACTOR WORK HOURS AND CONDITIONS:

Work hours are not to exceed eight (8) hours a day, forty (40) hours a week. Normal working hours of 8:00 am to 5:00 pm are to be observed unless otherwise agreed to in writing.

No overtime will be permitted without prior written approval.

Michigan Master Information Technology Training Contract
For Desktop and Technical Training

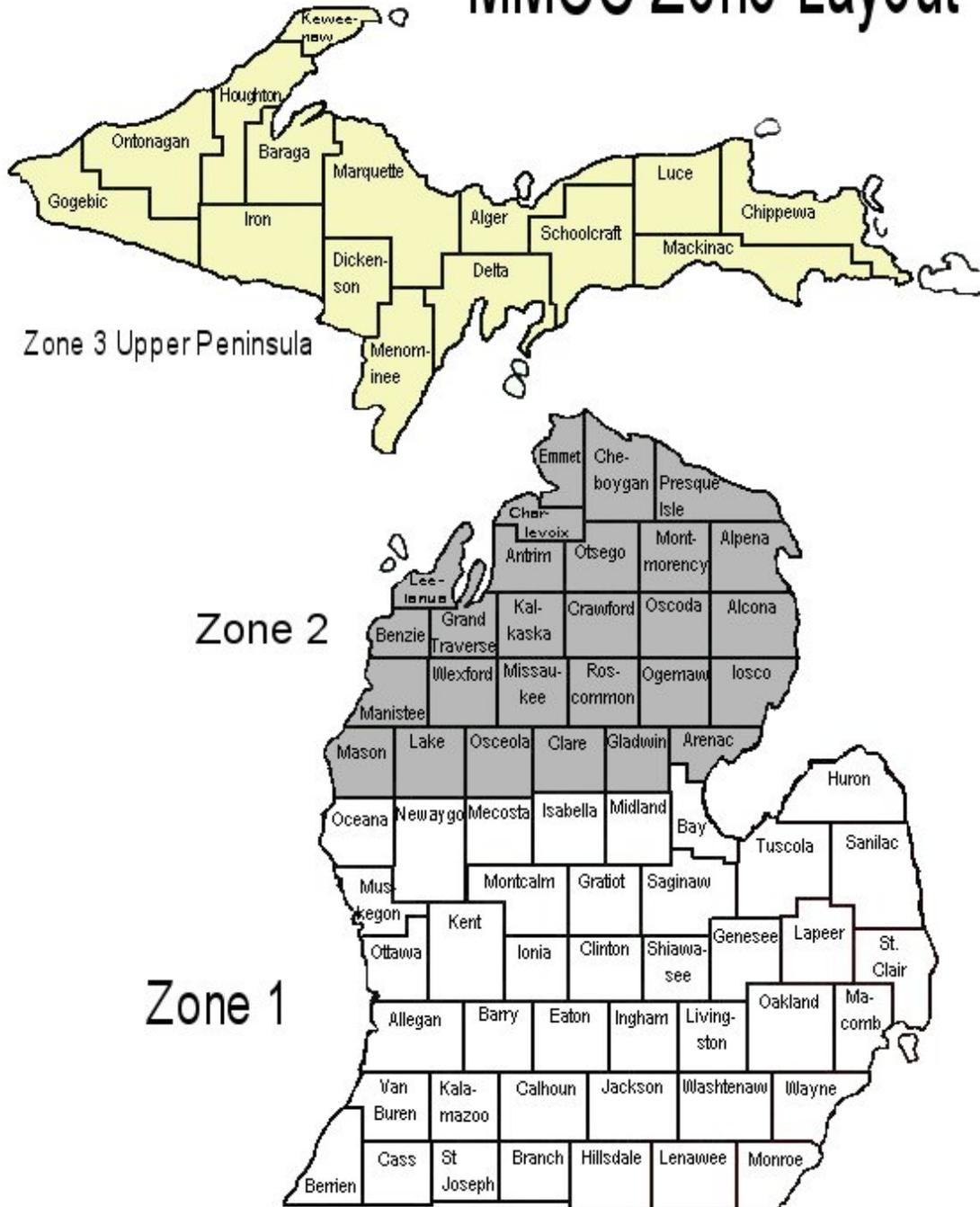
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Michigan Master Information Technology Training Contract

For Desktop and Technical Training

Appendix B 2.4.12 A MMCC Zone Layout

MMCC Zone Layout



Michigan Master Information Technology Training Contract
For Desktop and Technical Training

APPENDIX C IT TRAINING PROCUREMENT PROCESS FOR DIT

Michigan Master Information Technology Training Contract

For Desktop and Technical Training

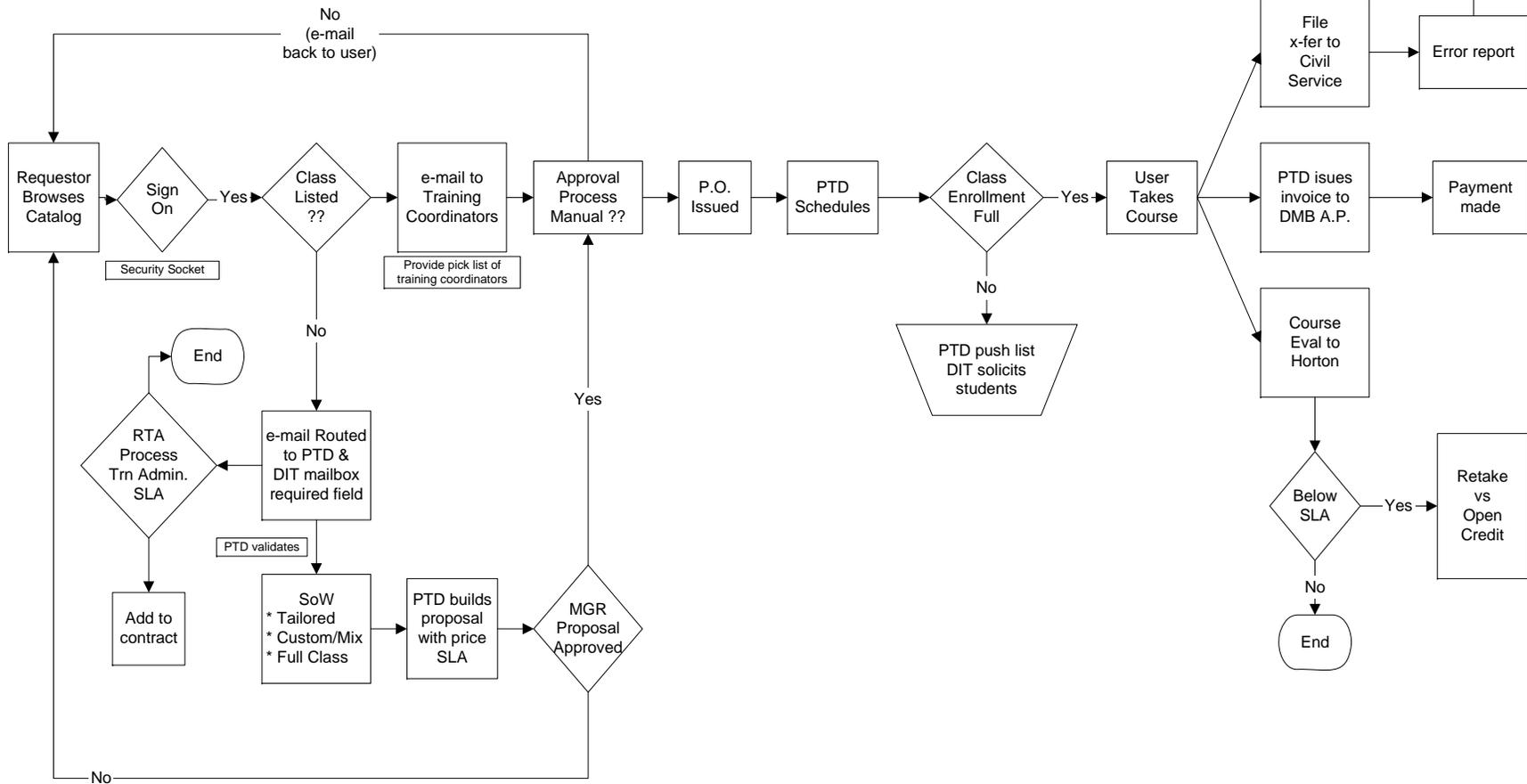
IT Training Procurement Process for DIT

3/18/2004

Reports

- # of students DIT
- # students by class type
- # students by agency
- new classes created
- remaining budget amount by index area
- class evaluation below SLA
- Quarterly usage report by _____

monthly detail to each agency
summary to DIT Trn Admin



Michigan Master Information Technology Training Contract

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Michigan Master Information Technology Training Contract

For Desktop and Technical Training

PRICING PROPOSAL APPENDIX D

Course	P/Class = all students from State	Formal Classroom Price						% Discount if Class Held in State Facility	Hrs of Trng	Instructor-Led e-Learning (Price Per Person)	Hrs of Trng	Self Paced e-Learning (Price Per Person)
		Det	GR	Lan	Z1	Z2	Z3					
GroupWise 5.x/6.5 Administration	P/Class	6300.00	6300.00	6300.00	6300.00	7300.00	7300.00	20.00%	24	416	18	99
	P/Person	705.00	705.00	705.00	705.00	705.00	705.00					
Novell Netware 5.x/6.x Administration	P/Class	10500.00	10500.00	10500.00	10500.00	11500.00	11500.00	20.00%	40	556	18	99
	P/Person	1175.00	1175.00	1175.00	1175.00	1175.00	1175.00					
Advanced Novell Netware 6.x Administration	P/Class	10500.00	10500.00	10500.00	10500.00	11500.00	11500.00	20.00%	40	556	18	99
	P/Person	1050.00	1050.00	1050.00	1050.00	1050.00	1050.00					
GroupWise 6.x	P/Class	581.00	581.00	581.00	581.00	1005.00	1209.00	10.00%	7			
	P/Person	73.00	73.00	73.00	73.00	126.00	151.00					
Microsoft Access 2000/XP Levels 1, 2 and 3	P/Class	1743.00	1743.00	1743.00	1743.00	3015.00	3627.00	10.00%	21	89	6	75
	P/Person	219.00	219.00	219.00	219.00	378.00	453.00					
Microsoft Excel 2000/XP Levels 1, 2 and 3	P/Class	1743.00	1743.00	1743.00	1743.00	3015.00	3627.00	10.00%	21	89	6	75
	P/Person	219.00	219.00	219.00	219.00	378.00	453.00					
Microsoft PowerPoint 2000/XP Levels 1 and 2	P/Class	1162.00	1162.00	1162.00	1162.00	2010.00	2418.00	10.00%	14	89	6	40
	P/Person	146.00	146.00	146.00	146.00	252.00	302.00					
Microsoft Project 2000/XP Levels 1, 2 and 3	P/Class	1743.00	1743.00	1743.00	1743.00	3015.00	3627.00	10.00%	21	89	6	40
	P/Person	219.00	219.00	219.00	219.00	378.00	453.00					
Microsoft Office Suite New Features -- 2000 to XP	P/Class	581.00	581.00	581.00	581.00	1005.00	1209.00	10.00%	7	89	6	40
	P/Person	73.00	73.00	73.00	73.00	126.00	151.00					
Microsoft Word 2000/2002 Levels 1 and 2	P/Class	1162.00	1162.00	1162.00	1162.00	2010.00	2418.00	10.00%	14	89	6	40
	P/Person	146.00	146.00	146.00	146.00	252.00	302.00					
Microsoft Outlook 2000/XP	P/Class	581.00	581.00	581.00	581.00	1005.00	1209.00	10.00%	7	89	6	40
	P/Person	73.00	73.00	73.00	73.00	126.00	151.00					

Michigan Master Information Technology Training Contract

For Desktop and Technical Training

Course	P/Class = all students from State	Formal Classroom Price						% Discount if Class Held in State Facility	Hrs of Trng	Instructor-Led e-Learning (Price Per Person)	Hrs of Trng	Self Paced e-Learning (Price Per Person)
		Det	GR	Lan	Z1	Z2	Z3					
Microsoft Visio 2000/2002 Levels 1 and 2	P/Class	1162.00	1162.00	1162.00	1162.00	2010.00	2418.00	10.00%	14	89	6	40
	P/Person	146.00	146.00	146.00	146.00	252.00	302.00					
WordPerfect to Microsoft Word migration	P/Class	581.00	581.00	581.00	581.00	1005.00	1209.00	10.00%	7			40
	P/Person	73.00	73.00	73.00	73.00	126.00	151.00					
Microsoft Windows XP Professional Fundamentals	P/Class	505.00	505.00	505.00	505.00	824.00	1010.00	10.00%	3.5	556	18	99
	P/Person	63.00	63.00	63.00	63.00	103.00	127.00					
Microsoft SQL Server 2000 Database Design	P/Class	10500.00	10500.00	10500.00	10500.00	11500.00	11500.00	20.00%	40	556	18	99
	P/Person	1175.00	1175.00	1175.00	1175.00	1175.00	1175.00					
Microsoft SQL Server 2000 Administration	P/Class	10500.00	10500.00	10500.00	10500.00	11500.00	11500.00	20.00%	40	556	18	99
	P/Person	1175.00	1175.00	1175.00	1175.00	1175.00	1175.00					
Microsoft Windows Server 2000/2003	P/Class	10500.00	10500.00	10500.00	10500.00	11500.00	11500.00	20.00%	40	556	18	99
	P/Person	1175.00	1175.00	1175.00	1175.00	1175.00	1175.00					
Adobe PhotoShop 7 Levels 1 and 2	P/Class	1576.00	1576.00	1576.00	1576.00	2424.00	2833.00	10.00%	14			
	P/Person	197.00	197.00	197.00	197.00	303.00	354.00					
Java Programming Fundamentals	P/Class	10500.00	10500.00	10500.00	10500.00	11500.00	11500.00	20.00%	40	416	18	99
	P/Person	1175.00	1175.00	1175.00	1175.00	1175.00	1175.00					
Advanced Java Programming	P/Class	10500.00	10500.00	10500.00	10500.00	11500.00	11500.00	20.00%	40	416	18	99
	P/Person	1175.00	1175.00	1175.00	1175.00	1175.00	1175.00					
.NET Fundamentals	P/Class	4200.00	4200.00	4200.00	4200.00	4950.00	4950.00	20.00%	16	416	18	99
	P/Person	470.00	470.00	470.00	470.00	470.00	470.00					
VB.NET Programming	P/Class	10500.00	10500.00	10500.00	10500.00	11500.00	11500.00	20.00%	40	416	18	99
	P/Person	1175.00	1175.00	1175.00	1175.00	1175.00	1175.00					

Michigan Master Information Technology Training Contract

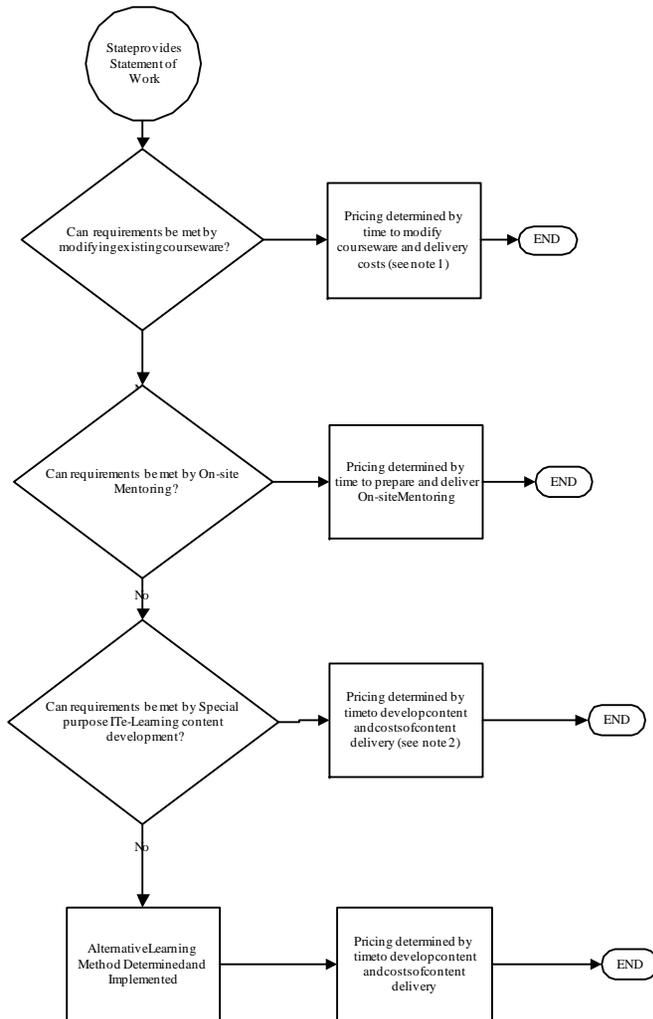
For Desktop and Technical Training

Course	P/Class = all students from State	Formal Classroom Price						% Discount if Class Held in State Facility	Hrs of Trng	Instructor-Led e-Learning (Price Per Person)	Hrs of Trng	Self Paced e-Learning (Price Per Person)
		Det	GR	Lan	Z1	Z2	Z3					
ASP.NET Web Programming	P/Class	10500.00	10500.00	10500.00	10500.00	11500.00	11500.00	20.00%	40	416	18	99
	P/Person	1175.00	1175.00	1175.00	1175.00	1175.00	1175.00					
XML Fundamentals	P/Class	4200.00	4200.00	4200.00	4200.00	4950.00	4950.00	20.00%	16	416	18	99
	P/Person	470.00	470.00	470.00	470.00	470.00	470.00					
Web Development Fundamentals	P/Class	4200.00	4200.00	4200.00	4200.00	4950.00	4950.00	20.00%	16	416	18	99
	P/Person	470.00	470.00	470.00	470.00	470.00	470.00					
CCNA Boot Camp	P/Class	9500.00	9500.00	9500.00	9500.00	10500.00	10500.00	20.00%	40	695	18	99
	P/Person	850.00	850.00	850.00	850.00	850.00	850.00					
Interconnecting Cisco Network Devices	P/Class	9500.00	9500.00	9500.00	9500.00	10500.00	10500.00	20.00%	40	695	18	99
	P/Person	850.00	850.00	850.00	850.00	850.00	850.00					
Implementing & Supporting Windows XP Professional	P/Class	10500.00	10500.00	10500.00	10500.00	11500.00	11500.00	20.00%	40	556	18	99
	P/Person	1175.00	1175.00	1175.00	1175.00	1175.00	1175.00					
Oracle 8i/9i Database Admin. Levels 1 and 2	P/Class	10500.00	10500.00	10500.00	10500.00	11500.00	11500.00	20.00%	40			99
	P/Person	1175.00	1175.00	1175.00	1175.00	1175.00	1175.00					
Oracle 8i/9i SQL and SQL *Plus	P/Class	10500.00	10500.00	10500.00	10500.00	11500.00	11500.00	20.00%	40			99
	P/Person	1175.00	1175.00	1175.00	1175.00	1175.00	1175.00					
Introduction to Wireless Communications	P/Class	10300.00	10300.00	10300.00	10300.00	11300.00	11300.00	0.00%	16	416	18	99
	P/Person	899.00	899.00	899.00	899.00	899.00	899.00					
Securing Wireless Networks	P/Class	15450.00	15450.00	15450.00	15450.00	16450.00	16450.00	0.00%	24	416	18	99
	P/Person	1349.00	1349.00	1349.00	1349.00	1349.00	1349.00					
Internetworking with TCP/IP	P/Class	6100.00	6100.00	6100.00	6100.00	7100.00	7100.00	20.00%	40	416	18	99
	P/Person	675.00	675.00	675.00	675.00	675.00	675.00					
WebSphere Portal Application Development	P/Class	23995.00	23995.00	23995.00	23995.00	24995.00	24995.00	20.00%	40			
	P/Person	1950.00	1950.00	1950.00	1950.00	1950.00	1950.00					
Total	P/Class	\$232,865	\$232,865	\$232,865	\$232,865	\$263,338	\$267,809	15.29%	903	10570	408	2608
	P/Person	24310.00	24310.00	24310.00	24310.00	25463.00	26013.00	Avg. %				

Michigan Master Information Technology Training Contract

For Desktop and Technical Training

Tailored IT Training Process



Note 1: Delivery costs may include items like:
 Hours of Instructor Time
 Room Rental
 Equipment
 Assessments
 Reporting Costs

Note 2: Content Delivery costs may include items like:
 Hours of Instructor Time
 Equipment
 Assessments
 Reporting Costs
 Bandwidth

Michigan Master Information Technology Training Contract

For Desktop and Technical Training

The “Blended Value-Add Option” is provided for the Contractor to supply the State with an alternate class delivery method. This optional delivery method is to be described and quoted in addition to the Formal Classroom, Instructor-Led e-Learning, and Self-Paced e-Learning training delivery methods which are quoted in the Training Cost Model worksheet. The Contractor must describe their Value-Add offering in detail below and quote their pricing in the Training Cost Model worksheet.

BLENDDED VALUE-ADD OPTION:

Mentor is a unique online mentoring program. This program offers State of Michigan employees:

- A team of professionally certified instructors to coach you and provide online support throughout your e-learning experience
- Chat rooms and peer-to-peer chat for online collaboration
- Simulated exams to help you prepare for certification

KnowledgeNet Mentor is available to students enrolled in Cisco ® and Microsoft ® technical training and certification courses.

Mentor is also available to students enrolled in other technical training (e.g. MS Office, NetWare, GroupWise, Java, XML, Oracle). It is the ideal training solution for students who like a little extra coaching.

Benefits of Mentor:

Access to Certified Instructors

Students registered for Mentor enjoy access to a team of certified instructors who provide subject-matter expertise in the classes they monitor. Students have the flexibility of sending course-related questions in real-time live chat or email. This exceptional service is offered beyond normal business hours to promote flexibility in students' training schedules. KnowledgeNet guarantees a six-hour response to all email inquiries, and chats are available 6:00 a.m. to 6:00 p.m. PST, Monday through Friday.

Flexible Studying

Because Mentor is available for extended lengths of time; you can use these resources to their fullest potential – not just during your training program.

Affordable Personal Training

If you're enrolled in our Cisco, Microsoft or CompTIA technical certification courses, you can enjoy the rewards of personal tutoring.

Certified Instructors with Real-World Experience

They exceed your expectations with the course content, they will also share priceless tips and techniques learned through the years of trial-and-error.

Blended Value -Add Option: When a State of Michigan student enrolls into the Instructor-led e-Learning course, they will get the self-paced version of that course at no charge for 6 weeks. The cost for Formal Classroom and Instructor-led e-Learning Mentoring will be \$135.00.

The cost for self paced Mentoring will be \$60.00.

Michigan Master Information Technology Training Contract

For Desktop and Technical Training

Tailored IT Cost Model		
Level 1 - Customize Existing Commodity Courseware		
Development Costs	Hours Required	
	Courseware Developer Rate (see note 1)	
	Developer Product Costs (see note 2)	
	Subtotal	0
Courseware Costs	Number of Students	
	Commodity Courseware Cost (see note 3)	
	Subtotal	0
Delivery Costs	Days of Training	
	Instructor Daily Rate (see note 1)	
	Daily Room Rental Rate (see note 4)	
	Equipment Acquisition Costs (see note 2)	
	Subtotal	0
Other Per Student Costs	Number of Students	
	Assessments Cost	
	Reporting Cost	
	Subtotal	0
	Total	0
Level 2 - On-site Mentoring		
Preparation Costs	Hours Required	
	Instructor Rate (see note 1)	
	Developer Product Costs (see note 2)	
	Subtotal	0
Courseware Costs	Number of Students	
	Courseware Reproduction Cost	
Subtotal	0	
Delivery Costs	Hours Required	
	Instructor Rate (see note 1)	
	Subtotal	0
Travel Costs	Travel, Meals, Lodging (see note 5)	
	Total	0
Level 3 - Special Purpose IT eLearning Content		
Development Costs	Hours Required	
	Courseware Developer Rate (see note 1)	
	Developer Product Costs (see note 2)	
	Subtotal	0
Courseware Costs	Number of Students	
	Reproduction or Acquisition Cost (see note 3)	
	Subtotal	0
Delivery Costs	Days of Training	
	Bandwidth Rental Rate	
	Equipment Acquisition Costs (see note 2)	
	Subtotal	0
	Other Per Student Costs	Number of Students
Assessments Cost		
Reporting Cost		
Subtotal		0
Total		0

Note 1: Courseware developers and instructors vary widely in skill level and demand. Rates vary accordingly.

Note 2: Special hardware or software may be required to meet specific state requirements.

Note 3: Commodity courseware varies widely in price.
For a one week course some is less than \$100 and others are in excess of \$400 per student.
Reproduction of custom courseware is typically \$20 per student

Michigan Master Information Technology Training Contract

For Desktop and Technical Training

Note 4: Room rental rates vary by hardware requirements and location

Note 5: Travel costs will be documented in a manner consistent with normal business practices and forwarded to the state without markup

Michigan Master Information Technology Training Contract

For Desktop and Technical Training

SECTION IV DEFINITION OF TERMS

Terms	Definitions
Blanket purchase order	Alternate term for “contract” used in the state’s Michigan Automated Information Network (MAIN) system.
Cancellation	Ending all rights and obligations of the state and contractor, except for any rights and obligations that are due and owing.
Contract	A binding agreement entered into by the state of Michigan resulting from a bidder’s proposal; see also “blanket purchase order.”
Contractor	The successful bidder who is awarded a contract.
DIT	Michigan Department of Information Technology
DIT client	A State Department or Agency.
DMB	Michigan Department of Management and Budget
E-Commerce (Business to Business Transactions)	Business-to-business commerce represents one of the fastest growing segments of e-commerce. Businesses order supplies and coordinate complicated projects electronically.
E-Commerce Product Transactions (e-Procure)	Retail web sites typically include electronic catalogs that describe and display products for sale. Consumers can search for individual items or randomly browse electronic catalogs. Many online retailers allow customers to order products and then track the shipment of their order. Many online retailers also automatically notify their customers by e-mail when the product has been shipped.
E-Commerce Service Transactions (e-Procure)	Other e-commerce businesses offer services. Financial services represent a large segment of e-commerce. Other sites provide consumers with a way to research and obtain mortgages and other loans online.

Michigan Master Information Technology Training Contract

For Desktop and Technical Training

Terms	Definitions
Effective Date Execution Date	The date on which both parties sign the contract.
Electronic Commerce	The exchange of goods and services by means of the internet or other computer network. E-commerce follows the same basic principles as traditional commerce-that is, buyers and sellers come together to exchange goods for money. But rather than conducting business in the traditional way-in stores and other “brick and mortar” buildings, or through mail order catalogs and telephone operators-in e-commerce buyers and sellers transact business over networked computers.
Expiration	Except were specifically provided for in the contract, the ending and termination of the contractual duties and obligations of the parties to the contract pursuant to a mutually agreed upon date.
HBA	Host bus adapter
Instructor-led e-learning	Courses feature live training over the internet with real instructors, in real-time.
MMITT	Michigan Master Information Technology Training. The State’s mandatory use contract for all Desktop and IT Professional training.
MMCC	Michigan Master Computing Contract. The State’s mandatory use contracts for all State agencies to provide hardware, software and services for end user and network computing.
Training Administrator	Individual named by the DMB Acquisition Services having administrative authority for the MMITT contract.