Form No. DTMB-3521 (Rev. 4/2012)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract change will not be executed unless form is filed

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

# CHANGE NOTICE NO. 3

to

# CONTRACT NO. 071B0200059

between

# THE STATE OF MICHIGAN

and

| NAME & ADDRESS OF CONTRACTOR: | PRIMARY CONTACT | EMAIL |
|---|---|---|
| Bartlett Actuarial Group, Ltd. | Legare Gresham | legareg@bartlettactuarialgroup.com |
| 145 King Street, #230 | TELEPHONE | CONTRACTOR #, MAIL CODE |
| Charleston, SC 29492 | (843) 377-0993 | |

| STATE CONTACTS | AGENCY | NAME | PHONE | EMAIL |
|---|---|---|---|---|
| CONTRACT COMPLIANCE INSPECTOR | DIFS | Karen Sage | 517-241-6374 | sagek@michigan.gov |
| BUYER | DTMB | Lance Kingsbury | 517-241-3768 | kingsburyl@michigan.gov |

## CONTRACT SUMMARY:

DESCRIPTION: **Actuarial Services – Statewide – DIFS**

| INITIAL EFFECTIVE DATE | INITIAL EXPIRATION DATE | INITIAL AVAILABLE OPTIONS | EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW |
|---|---|---|---|
| December 1, 2009 | November 30, 2012 | 2, 1 year | November 30, 2014 |
| PAYMENT TERMS | F.O.B | SHIPPED | SHIPPED FROM |
| N/A | N/A | N/A | N/A |

| ALTERNATE PAYMENT OPTIONS: | | | AVAILABLE TO MiDEAL PARTICIPANTS |
|---|---|---|---|
| ☐ P-card | ☐ Direct Voucher (DV) | ☐ Other | ☐ Yes ☒ No |

MINIMUM DELIVERY REQUIREMENTS:

N/A

## DESCRIPTION OF CHANGE NOTICE:

| EXTEND CONTRACT EXPIRATION DATE | EXERCISE CONTRACT OPTION YEAR(S) | EXTENSION BEYOND CONTRACT OPTION YEARS | LENGTH OF OPTION/EXTENSION | EXPIRATION DATE AFTER CHANGE |
|---|---|---|---|---|
| ☐ No ☒ Yes | ☐ | ☒ | 2 months | January 31, 2015 |

| VALUE/COST OF CHANGE NOTICE: | ESTIMATED AGGREGATE CONTRACT VALUE REMAINS: |
|---|---|
| $0.00 | $1,050,000.00 |

**Effective December 1, 2014, this contract is hereby extended two months to January 31, 2015. All other terms, conditions, pricing and specifications remain the same. Per contractor and agency agreement, the approval of DTMB Procurement and the approval of the State Administrative Board on November 25, 2014.**

Form No. DTMB-3521 (Rev. 4/2012)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract change will not be executed unless form is filed

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

# CHANGE NOTICE NO. 2

to

# CONTRACT NO. 071B0200059

between

# THE STATE OF MICHIGAN

and

| NAME & ADDRESS OF CONTRACTOR: | PRIMARY CONTACT | EMAIL |
|---|---|---|
| Bartlett Actuarial Group, Ltd. | Legare Gresham | legareg@bartlettactuarialgroup.com |
| 145 King Street, #230 | TELEPHONE | CONTRACTOR #, MAIL CODE |
| Charleston, SC 29492 | (843) 377-0993 | |

| STATE CONTACTS | AGENCY | NAME | PHONE | EMAIL |
|---|---|---|---|---|
| CONTRACT COMPLIANCE INSPECTOR | DIFS | Karen Sage | 517-241-6374 | sagek@michigan.gov |
| BUYER | DTMB | Lance Kingsbury | 517-241-3768 | kingsburyl@michigan.gov |

## CONTRACT SUMMARY:

DESCRIPTION: **Actuarial Services – Statewide – DELEG**

| INITIAL EFFECTIVE DATE | INITIAL EXPIRATION DATE | INITIAL AVAILABLE OPTIONS | EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW |
|---|---|---|---|
| December 1, 2009 | November 30, 2012 | 2, 1 year | November 30, 2013 |
| PAYMENT TERMS | F.O.B | SHIPPED | SHIPPED FROM |
| N/A | N/A | N/A | N/A |

| ALTERNATE PAYMENT OPTIONS: | | | AVAILABLE TO MiDEAL PARTICIPANTS |
|---|---|---|---|
| ☐ P-card | ☐ Direct Voucher (DV) | ☐ Other | ☐ Yes ☒ No |

MINIMUM DELIVERY REQUIREMENTS:

N/A

## DESCRIPTION OF CHANGE NOTICE:

| EXTEND CONTRACT EXPIRATION DATE | EXERCISE CONTRACT OPTION YEAR(S) | EXTENSION BEYOND CONTRACT OPTION YEARS | LENGTH OF OPTION/EXTENSION | EXPIRATION DATE AFTER CHANGE |
|---|---|---|---|---|
| ☐ No ☒ Yes | ☒ | ☐ | 1 year | November 30, 2014 |

| VALUE/COST OF CHANGE NOTICE: | ESTIMATED AGGREGATE CONTRACT VALUE REMAINS: |
|---|---|
| $0.00 | $1,050,000.00 |

**Effective immediately, this Contract is hereby utilizing an option year to November 30, 2014. The Contract Compliance Inspector has changed to:**

**Karen Sage**
**sagek@michigan.gov**
**517-241-6374**

**Also note, The Office of Financial and Insurance Regulation (OFIR) is now called the Department of Insurance and**

**Financial Services (DIFS).**

**Please see the Article 1.041 Project Plan Management is changed as follows:**

| Original Office Title | Changed Office Title | Contact Name Change |
|---|---|---|
| Enterprise Monitoring Division | Office of Insurance Evaluation-Insurance Examination Division | No change |
| Licensing and Product Review Division | Office of Insurance Rates and Forms-Product Review Division | No change |
| Supervisory Affairs and Insurance Monitoring Division | Office of Insurance Evaluation | No change |
| Health Plans Division | Office of Insurance Rates and Forms | Rhonda Fossitt, Office Director<br>Address no change<br>Phone (517) 241-5130<br>Fax no change<br>fossittr@michigan.gov |
| Various Division, as needed | No change | Karen Sage, Manager<br>Office of Financial and Administrative Services<br>Address no change<br>Phone (517) 241-6347<br>Fax (517) 335-1439<br>sagek@michigan.gov |
| Policy Division | Office of Policy | Jenita Moore, Office Director<br>Address no change<br>Phone (517) 241-3911<br>Fax: (517) 335-1727<br>Moorej5@michigan.gov |

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

**Per vendor and agency agreement and the approval of DTMB Procurement.**

Form No. DTMB-3521 (Rev. 4/2012)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract change will not be executed unless form is filed

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

# CHANGE NOTICE NO. 1

**to**

# CONTRACT NO. 071B0200059

**between**

# THE STATE OF MICHIGAN

**and**

| NAME & ADDRESS OF CONTRACTOR: | PRIMARY CONTACT | EMAIL |
|---|---|---|
| **Bartlett Actuarial Group, Ltd.** | Legare Gresham | legareg@bartlettactuarialgroup.com |
| **145 King Street, #230** | **TELEPHONE** | **CONTRACTOR #, MAIL CODE** |
| **Charleston, SC 29492** | (843) 377-0993 | |

| STATE CONTACTS | AGENCY | NAME | PHONE | EMAIL |
|---|---|---|---|---|
| CONTRACT COMPLIANCE INSPECTOR | DELEG | Rhonda Mackie | 517-336-1732 | |
| BUYER | DTMB | Lance Kingsbury | 517-241-3768 | kingsburyl@michigan.gov |

## CONTRACT SUMMARY:

DESCRIPTION: **Actuarial Services – Statewide – DELEG**

| INITIAL EFFECTIVE DATE | INITIAL EXPIRATION DATE | INITIAL AVAILABLE OPTIONS | EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW |
|---|---|---|---|
| December 1, 2009 | November 30, 2012 | 2, one year | November 30, 2012 |
| **PAYMENT TERMS** | **F.O.B** | **SHIPPED** | **SHIPPED FROM** |
| N/A | N/A | N/A | N/A |

| ALTERNATE PAYMENT OPTIONS: | | | AVAILABLE TO MiDEAL PARTICIPANTS | |
|---|---|---|---|---|
| ☐ P-card | ☐ Direct Voucher (DV) | ☐ Other | ☐ Yes | ☒ No |

**MINIMUM DELIVERY REQUIREMENTS:**

N/A

## DESCRIPTION OF CHANGE NOTICE:

| EXTEND CONTRACT EXPIRATION DATE | EXERCISE CONTRACT OPTION YEAR(S) | EXTENSION BEYOND CONTRACT OPTION YEARS | LENGTH OF OPTION/EXTENSION | EXPIRATION DATE AFTER CHANGE |
|---|---|---|---|---|
| ☐ No ☒ Yes | ☒ | ☐ | 1 year | Nov. 30, 2013 |

| VALUE/COST OF CHANGE NOTICE: | ESTIMATED AGGREGATE CONTRACT VALUE REMAINS: |
|---|---|
| $0.00 | $1,050,000.00 |

Effective September 13, 2012, this contract is hereby EXTENDED one year, using an option to extend the contract. The new contract end date is November 30, 2013. All other terms, conditions, pricing and specifications remain the same. Per vendor and agency agreement and the approval of DTMB Procurement.

Form No. DMB 234 (Rev. 1/96)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract will not be executed unless form is filed

**STATE OF MICHIGAN**
**DEPARTMENT OF MANAGEMENT AND BUDGET** **December 3, 2009**
**PURCHASING OPERATIONS**
**P.O. BOX 30026, LANSING, MI 48909**
**OR**
**530 W. ALLEGAN, LANSING, MI 48933**

# NOTICE
# TO
# CONTRACT NO. 071B0200059
# between
# THE STATE OF MICHIGAN
# and

| NAME & ADDRESS OF CONTRACTOR | TELEPHONE (843) 377-0993<br>**Legare Gresham** |
|---|---|
| **Bartlett Actuarial Group, Ltd.**<br>**145 King Street #203**<br>**Charleston, SC 29492**<br>**legareg@bartlettactuarialgroup.com** | BUYER/CA (517) 241-3768<br>**Lance Kingsbury** |
| Contract Compliance Inspector: Rhonda Mackie (517.336.1732)<br>**Actuarial Services – Statewide – DELEG** | |
| CONTRACT PERIOD: From: **December 1, 2009** To: **November 30, 2012** | |
| TERMS<br>**N/A** | SHIPMENT<br>**N/A** |
| F.O.B.<br>**N/A** | SHIPPED FROM<br>**N/A** |
| MINIMUM DELIVERY REQUIREMENTS<br>**N/A** | |

**The terms and conditions of this Contract are those of RFP #071I9200273, this Contract Agreement and the Contractor's quote dated 9/25/2009. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the Contractor, those of the State take precedence.**

**Current Authorized Spend Limit: $1,050,000.00**

Form No. DMB 234 (Rev. 1/96)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract will not be executed unless form is filed

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

# CONTRACT NO. 071B0200059
# between
# THE STATE OF MICHIGAN
# and

| NAME & ADDRESS OF CONTRACTOR | TELEPHONE (843) 377-0993<br>**Legare Gresham** |
|---|---|
| **Bartlett Actuarial Group, Ltd.**<br>**145 King Street #203**<br>**Charleston, SC 29492**<br>**legare@bartlettactuarialgroup.com** | BUYER/CA (517) 241-3768<br>**Lance Kingsbury** |

Contract Compliance Inspector: Rhonda Mackie (517.336.1732)
**Actuarial Services – Statewide – DELEG**

| CONTRACT PERIOD: | From: **December 1, 2009** To: **November 30, 2012** |
|---|---|
| TERMS<br>**N/A** | SHIPMENT<br>**N/A** |
| F.O.B.<br>**N/A** | SHIPPED FROM<br>**N/A** |

MINIMUM DELIVERY REQUIREMENTS
**N/A**

MISCELLANEOUS INFORMATION:

**The terms and conditions of this Contract are those of RFP #071I9200273, this Contract Agreement and the Contractor's quote dated 9/25/2009. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the Contractor, those of the State take precedence.**

**Current Authorized Spend Limit: $1,050,000.00**

**THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the RFP #071I9200273. Orders for delivery may be issued directly by the Department of Energy, Labor and Economic Growth/Office of Financial and Insurance Regulation (DELEG/OFIR) through the issuance of a Purchase Order Form.**

| **FOR THE CONTRACTOR:** | **FOR THE STATE:** |
|---|---|
| **Bartlett Actuarial Group, Ltd.**<br>Firm Name | Signature |
| | **William C. Walsh, CPPB, CPPO**<br>**Acting Division Director** |
| Authorized Agent Signature | Name/Title |
| | **Services Division, Purchasing Operations** |
| Authorized Agent (Print or Type) | Division |
| Date | Date |

**STATE OF MICHIGAN**
**Department of Management and Budget**
**Purchasing Operations**

Contract No. 071B0200059

Actuarial Services – Statewide

Buyer Name: Lance Kingsbury
Telephone Number: 517.241.3768
E-Mail Address: kingsburyL@michigan.gov

## Table of Contents

**DEFINITIONS** ..... **7**

**Article 1 – Statement of Work (SOW)** ..... **9**
**1.010 Project Identification** ..... 9
1.011 Project Request ..... 9
1.012 Background ..... 9
**1.020 Scope of Work and Deliverables** ..... 11
1.021 In Scope ..... 11
1.022 Work and Deliverable ..... 13
**1.030 Roles and Responsibilities** ..... 17
1.031 Contractor Staff, Roles, and Responsibilities ..... 17
**1.040 Project Plan** ..... 17
1.041 Project Plan Management ..... 17
1.042 Reports ..... 21
**1.050 Acceptance** ..... 22
1.051 Criteria ..... 22
1.052 Final Acceptance ..... 23
**1.060 Proposal Pricing** ..... 23
1.061 Proposal Pricing ..... 23
1.062 Price Term ..... 23
1.063 Tax Excluded from Price ..... 23
**1.070 Additional Requirements** ..... 23
1.071 Additional Terms and Conditions specific to this Contract – Deleted – N/A ..... 23

**Article 2, Terms and Conditions** ..... **24**
**2.000 Contract Structure and Term** ..... 24
2.001 Contract Term ..... 24
2.002 Options to Renew ..... 24
2.003 Legal Effect ..... 24
2.004 Attachments & Exhibits ..... 24
2.005 Ordering ..... 24
2.006 Order of Precedence ..... 24
2.007 Headings ..... 24
2.008 Form, Function & Utility ..... 25
2.009 Reformation and Severability ..... 25
2.010 Consents and Approvals ..... 25
2.011 No Waiver of Default ..... 25
2.012 Survival ..... 25
**2.020 Contract Administration** ..... 25
2.021 Issuing Office ..... 25
2.022 Contract Compliance Inspector ..... 25
2.023 Project Manager ..... 26
2.024 Change Requests ..... 26
2.025 Notices ..... 26
2.026 Binding Commitments ..... 26
2.027 Relationship of the Parties ..... 26
2.028 Covenant of Good Faith ..... 26
2.029 Assignments ..... 27
**2.030 General Provisions** ..... 27
2.031 Media Releases ..... 27
2.032 Contract Distribution ..... 27
2.033 Permits ..... 27
2.034 Website Incorporation ..... 27
2.035 Future Bidding Preclusion ..... 27
2.036 Freedom of Information ..... 27
2.037 Disaster Recovery ..... 27

**2.040 Financial Provisions** ..... 28
2.041 Fixed Prices for Services/Deliverables ..... 28
2.042 Adjustments for Reductions in Scope of Services/Deliverables ..... 28
2.043 Services/Deliverables Covered ..... 28
2.044 Invoicing and Payment – In General ..... 28
2.045 Pro-ration ..... 28
2.046 Antitrust Assignment ..... 28
2.047 Final Payment ..... 28
2.048 Electronic Payment Requirement ..... 28
**2.050 Taxes** ..... 29
2.051 Employment Taxes ..... 29
2.052 Sales and Use Taxes ..... 29
**2.060 Contract Management** ..... 29
2.061 Contractor Personnel Qualifications ..... 29
2.062 Contractor Key Personnel ..... 29
2.063 Re-assignment of Personnel at the State's Request ..... 30
2.064 Contractor Personnel Location ..... 30
2.065 Contractor Identification ..... 30
2.066 Cooperation with Third Parties ..... 30
2.067 Contractor Return of State Equipment/Resources ..... 30
2.068 Contract Management Responsibilities ..... 30
**2.070 Subcontracting by Contractor** ..... 30
2.071 Contractor Full Responsibility ..... 30
2.072 State Consent to Delegation ..... 30
2.073 Subcontractor Bound to Contract ..... 31
2.074 Flow Down ..... 31
2.075 Competitive Selection ..... 31
**2.080 State Responsibilities** ..... 31
2.081 Equipment ..... 31
2.082 Facilities ..... 31
**2.090 Security** ..... 31
2.091 Background Checks ..... 31
2.092 Security Breach Notification ..... 32
**2.100 Confidentiality** ..... 32
2.101 Confidentiality ..... 32
2.102 Protection and Destruction of Confidential Information ..... 32
2.103 Exclusions ..... 32
2.104 No Implied Rights ..... 33
2.105 Respective Obligations ..... 33
**2.110 Records and Inspections** ..... 33
2.111 Inspection of Work Performed ..... 33
2.112 Examination of Records ..... 33
2.113 Retention of Records ..... 33
2.114 Audit Resolution ..... 33
2.115 Errors ..... 33
**2.120 Warranties** ..... 34
2.121 Warranties and Representations ..... 34
2.122 Warranty of Merchantability – Deleted – NA ..... 34
2.123 Warranty of Fitness for a Particular Purpose – Deleted – NA ..... 34
2.124 Warranty of Title – Deleted – NA ..... 34
2.125 Equipment Warranty – Deleted – NA ..... 34
2.126 Equipment to be New – Deleted – NA ..... 34
2.127 Prohibited Products – Deleted – NA ..... 34
2.128 Consequences For Breach ..... 34
**2.130 Insurance** ..... 35
2.131 Liability Insurance ..... 35
2.132 Subcontractor Insurance Coverage ..... 36
2.133 Certificates of Insurance and Other Requirements ..... 36

**2.140 Indemnification** ..... 36
2.141 General Indemnification ..... 36
2.142 Code Indemnification ..... 36
2.143 Employee Indemnification ..... 37
2.144 Patent/Copyright Infringement Indemnification ..... 37
2.145 Continuation of Indemnification Obligations ..... 37
2.146 Indemnification Procedures ..... 37
**2.150 Termination/Cancellation** ..... 38
2.151 Notice and Right to Cure ..... 38
2.152 Termination for Cause ..... 38
2.153 Termination for Convenience ..... 38
2.154 Termination for Non-Appropriation ..... 39
2.155 Termination for Criminal Conviction ..... 39
2.156 Termination for Approvals Rescinded ..... 39
2.157 Rights and Obligations upon Termination ..... 39
2.158 Reservation of Rights ..... 40
**2.160 Termination by Contractor** ..... 40
2.161 Termination by Contractor ..... 40
**2.170 Transition Responsibilities** ..... 40
2.171 Contractor Transition Responsibilities ..... 40
2.172 Contractor Personnel Transition ..... 40
2.173 Contractor Information Transition ..... 40
2.174 Contractor Software Transition ..... 40
2.175 Transition Payments ..... 41
2.176 State Transition Responsibilities ..... 41
**2.180 Stop Work** ..... 41
2.181 Stop Work Orders ..... 41
2.182 Cancellation or Expiration of Stop Work Order ..... 41
2.183 Allowance of Contractor Costs ..... 41
**2.190 Dispute Resolution** ..... 41
2.191 In General ..... 41
2.192 Informal Dispute Resolution ..... 41
2.193 Injunctive Relief ..... 42
2.194 Continued Performance ..... 42
**2.200 Federal and State Contract Requirements** ..... 42
2.201 Nondiscrimination ..... 42
2.202 Unfair Labor Practices ..... 42
2.203 Workplace Safety and Discriminatory Harassment ..... 43
2.204 Prevailing Wage – Delete – NA ..... 43
**2.210 Governing Law** ..... 43
2.211 Governing Law ..... 43
2.212 Compliance with Laws ..... 43
2.213 Jurisdiction ..... 43
**2.220 Limitation of Liability** ..... 43
2.221 Limitation of Liability ..... 43
**2.230 Disclosure Responsibilities** ..... 43
2.231 Disclosure of Litigation ..... 43
2.232 Call Center Disclosure ..... 44
2.233 Bankruptcy ..... 44
**2.240 Performance** ..... 44
2.241 Time of Performance ..... 44
2.243 Liquidated Damages – Deleted – NA ..... 45
2.244 Excusable Failure ..... 45

**2.250 Approval of Deliverables** ..... 45
2.251 Delivery Responsibilities – Deleted – NA ..... 45
2.252 Delivery of Deliverables ..... 45
2.253 Testing – Deleted – NA ..... 45
2.254 Approval of Deliverables, In General ..... 46
2.255 Process for Approval of Written Deliverables ..... 46
2.256 Process for Approval of Services ..... 47
2.257 Process for Approval of Physical Deliverables ..... 47
2.258 Final Acceptance ..... 47
**2.260 Ownership** ..... 47
2.261 Ownership of Work Product by State ..... 47
2.262 Vesting of Rights ..... 47
2.263 Rights in Data ..... 47
2.264 Ownership of Materials ..... 48
**2.270 State Standards** ..... 48
2.271 Existing Technology Standards ..... 48
2.272 Acceptable Use Policy ..... 48
2.273 Systems Changes ..... 48
**2.280 Extended Purchasing** ..... 48
2.281 MiDEAL ..... 48
2.282 State Employee Purchases – Deleted – NA ..... 48
**2.290 Environmental Provision** ..... 48
2.291 Environmental Provision ..... 48
**2.300 Other Provisions** ..... 49
2.311 Forced Labor, Convict Labor, Forced or Indentured Child Labor, or Indentured Servitude Made Materials ..... 49

**Appendix A, Price Proposal ..... 50**

## DEFINITIONS

**24x7x365** means 24 hours a day, seven days a week, and 365 days a year (including the 366th day in a leap year).

**Additional Service** means any Services within the scope of the Contract, but not specifically provided under any Statement of Work.

**Audit Period** means the seven year period following Contractor's provision of any work under the Contract.

**Bidder(s)** are those companies that submit a proposal in response to an RFP.

**Business Day** means any day other than a Saturday, Sunday or State-recognized legal holiday from 8:00am EST through 5:00pm EST unless otherwise stated.

**Blanket Purchase Order** is an alternate term for Contract and is used in the Plan Sponsors' computer system.

**CCI** means Contract Compliance Inspector.

**Days** mean calendar days unless otherwise specified.

**Deleted – N/A** means that section is not applicable or included in this Contract. This is used as a placeholder to maintain consistent numbering.

**Deliverable** means physical goods and/or services required or identified in a Statement of Work.

**DMB** means the Michigan Department of Management and Budget.

**Environmentally Preferable Products** means a product or service that has a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. Such products or services may include, but are not limited to: those which contain recycled content, minimize waste, conserve energy or water, and reduce the amount of toxics either disposed of or consumed.

**Hazardous Material** means any material defined as hazardous under the latest version of federal Emergency Planning and Community Right-to-Know Act of 1986 (including revisions adopted during the term of the Contract).

**Incident** means any interruption in any function performed for the benefit of a Plan Sponsor.

**Key Personnel** means any personnel identified in **Section 1.031** as Key Personnel.

**New Work** means any Services/Deliverables outside the scope of the Contract and not specifically provided under any Statement of Work, such that once added will result in the need to provide the Contractor with additional consideration. "New Work" does not include Additional Service.

**Ozone-depleting Substance** means any substance the Environmental Protection Agency designates in 40 CFR part 82 as: (1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or (2) Class II, including, but not limited to, hydrochlorofluorocarbons.

**Post-Consumer Waste** means any product generated by a business or consumer which has served its intended end use; and which has been separated or diverted from solid waste for the purpose of recycling into a usable commodity or product, and which does not include post-industrial waste.

**Post-Industrial Waste** means industrial by-products which would otherwise go to disposal and wastes generated after completion of a manufacturing process, but does not include internally generated scrap commonly returned to industrial or manufacturing processes.

**Recycling** means the series of activities by which materials that are no longer useful to the generator are collected, sorted, processed, and converted into raw materials and used in the production of new products. This definition excludes the use of these materials as a fuel substitute or for energy production.

**Reuse** means using a product or component of municipal solid waste in its original form more than once.

**RFP** means a Request for Proposal designed to solicit proposals for services.

**Services** means any function performed for the benefit of the State.

**SLA** means Service Level Agreement.

**Source Reduction** means any practice that reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment prior to recycling, energy recovery, treatment, or disposal.

**State Location** means any physical location where the State performs work. State Location may include state-owned, leased, or rented space.

**Subcontractor** means a company selected by the Contractor to perform a portion of the Services, but does not include independent contractors engaged by Contractor solely in a staff augmentation role.

**Unauthorized Removal** means the Contractor's removal of Key Personnel without the prior written consent of the State.

**Waste Prevention** means source reduction and reuse, but not recycling.

**Pollution Prevention** means the practice of minimizing the generation of waste at the source and, when wastes cannot be prevented, utilizing environmentally sound on-site or off-site reuse and recycling. The term includes equipment or technology modifications, process or procedure modifications, product reformulation or redesign, and raw material substitutions. Waste treatment, control, management, and disposal are not considered pollution prevention, per the definitions under Part 143, Waste Minimization, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended.

**Work in Progress** means a Deliverable that has been partially prepared, but has not been presented to the State for Approval.

**Work Product** refers to any data compilations, reports, and other media, materials, or other objects or works of authorship created or produced by the Contractor as a result of an in furtherance of performing the services required by the Contract.

## Article 1 – Statement of Work (SOW)

### *1.010 Project Identification*

**1.011 Project Request**
This is a Contract to provide a specific Office of Financial and Insurance Regulation (OFIR) examination in one (or more) of the following services: Life/Health actuarial consulting services, Property/Casualty actuarial consulting services, Insurance Code Section 830(3) and Other Reviews, Life/Health Actuary for Rate Reviews, Other and Particular Insurance Line Actuarial Services, and Statutory Reports and Public Policy and Research Actuarial Services.

**1.012 Background**
OFIR (website link: http://www.michigan.gov/dleg/0,1607,7-154-10555---,00.html) regulates a wide range of entities including, but not limited to, the following:

- Full and single line HMO's
- Blue Cross Blue Shield of Michigan
- Multiple Employer Welfare Arrangements
- Property, Casualty, Life and Health Insurance Companies
- US Branches of Canadian Insurers
- Limited Liability Pools
- Reciprocal Exchanges
- Municipal Pools

The Enterprise Monitoring, Licensing and Product Review, Supervisory Affairs and Insurance Monitoring, and Health Plan Divisions are responsible for licensing, examining, investigating, and supervising over 120,000 individual licensees and 15,000 entities. In addition, the Policy Division is responsible for public policy matters related to this area. The legal authorities for the regulatory functions are encompassed in several acts:

- Health Benefit Agent Act
- Insurance Code: 1956 PA 218
- Nonprofit Health Care Corporation Reform Act
- Patient's Right to Independent Review Act

Below is a description of the OFIR Divisions that will utilize this Contract:

- **The Enterprise Monitoring Division** processes corporate filings of insurance companies, examines insurance entities, and conducts a consolidated review and analysis of financial service enterprise organizations.

  OFIR is responsible for regulating the financial solvency and compliance with National Association of Insurance Commissioners (NAIC) requirements and the Michigan Insurance Code. OFIR attempts to insure compliance with the regulations and Code through periodic examinations of the regulated entities. The examinations can occur throughout the United States and Canada. The staff of OFIR conducts the examinations, but the Division has no fully certified actuaries (actuaries who have taken and passed all ten exams) with training or experience in the fields of life, health, property or casualty insurance actuarial science. An analysis and evaluation by a Fellow of the Society of Actuaries/Fellow of the Casualty Society of Actuaries of the adequacy of reserves of regulated entities are critical to the Commissioner's ability to adequately examine the entities and ensure compliance with standards, regulations and Code.

  Also, it is imperative that the actuarial firms or individuals assisting OFIR with specific examinations not be associated, either financially or contractually, with the entity being examined and that there must be no financial or contractual relationship, either written or oral, for two years prior to, during the life of and for two years after, any contract awarded or any subsequent contract work order without the written consent of OFIR. Failure by the Contractor to comply with this provision may result in the cancellation of services and/or this Contact.
- **The Licensing and Product Review Division** is responsible for the review of insurance rate and form filings.

  There are consequences for OFIR failing to actuarially examine filings within 15 days of receipt. Michigan consumers are hurt by rates that do not accurately reflect the risk purported to be assumed in the policy in that:

1) Rate levels might be higher than what they should be and than what their budgets can afford.
2) Rate levels in particular areas of the state might be disproportionate with regard to the actual level of risk in those areas.
3) Rate levels that are higher than what is justified may effectively make insurance unavailable to an individual or a significant portion of consumers in various geographic areas.
4) Rates may reflect classifications that should not be used to determine policy premiums.

Pursuant to MCL 500.2408 and 500.2608, if "prior approval" rate filings are not disapproved by OFIR by the 15th day after receipt, they are deemed approved and the insurer can immediately use the rates and continue to do so until OFIR receives a decision in its favor from the highest level court after all appeals have been exhausted (possibly the Michigan Supreme Court).

Pursuant to MCL 500.2108, 2430, and 2628, insurers can immediately use classifications and rates submitted on a "file and use" basis. Again, they can continue to do so until OFIR receives a decision in its favor from the highest level court after all appeals have been exhausted (possibly the Michigan Supreme Court). It behooves State government to identify classification and rate problems as soon as possible in order to take necessary action to rid the market of unacceptable classifications and rates. In many instances, companies will stop using rates that OFIR has found to be actuarially unjustified. In other instances, there is an opportunity to stop the rates from being on the market any longer than they should be.

The actuarial examinations provide OFIR with the actuarial expertise that it needs, and that OFIR analytical staff cannot provide, with regard to any adjudicative actions that OFIR takes against companies to bring them into compliance with Michigan rating laws and with regard to defending our actions when insurers appeal our formal disapproval and withdrawal of approval notifications.

Michigan Insurance Code chapters and other regulations that the Contractor will have to understand and utilize with regard to acceptability of classifications and rates are:

- Chapter 21, 23, 24, 26, 28, 31, 33, 34, 36, 40, and 44
- MCL 500.2027
- MCL 500.2109
- MCL 500.2110
- MCL 500.2110a
- MCL 500.2111
- MCL 500.2401
- MCL 500.2403
- MCL 500.2407
- MCL 500.2411
- MCL 500.2601
- MCL 500.2603
- MCL 500.3109
- MCL 500.3109a
- Administrative Rules R 500.801 thru 500.809
- Administrative Rules R 500.1201 thru R 500.1210
- Administrative Rules R 500.1301 thru R 500.1310
- Administrative Rules R 500.1501 thru R 500.1507
- Administrative Rules R 550.201 thru 550.221

- **The Supervisory Affairs and Insurance Monitoring Division** is responsible for the financial analysis of insurance entities, both domestic and foreign. The Division is also responsible for monitoring troubled insurance entities including entities under supervision, seizure, rehabilitation or liquidation.

- **The Health Plans Division** is responsible for reviewing and analyzing subscriber certificate filings, rate system filings, provider contract filings, including nonprofit health care corporations (Blue Cross Blue Shield of Michigan) and nonprofit dental care corporations, as well as insurance entities such as health maintenance organizations, alternative financing and delivery systems and multiple employer welfare arrangements.

**Various Divisions, as Needed: Other and Particular Line Actuarial Services** refers to Section 2477 of the Insurance Code of 1956, 1956 PA 218 MCL 500.2477, requires insurers that provide professional liability insurance to a person licensed by the Michigan Boards of: Medicine, Osteopathic Medicine and Surgery, Podiatry Medicine and Surgery, Dentistry, Optometry, Chiropractic, and hospitals licensed by the Department of Public Health, to submit claims information to Office of Financial and Insurance Regulation (OFIR) if damages are being sought for personal injury caused by negligence of the insured. Insurers are required to submit these data on OFIR Forms A and B.

Section 2477c of the Insurance Code of 1956, 1956 PA, MCL 500.2477c, requires attorneys representing plaintiffs or defendants that provide professional liability insurance to a person licensed by the Michigan Boards of: Medicine, Osteopathic Medicine and Surgery, Podiatry Medicine and Surgery, Dentistry, Optometry, Chiropractic, and hospitals licensed by the Department of Public Health, to submit claims information to OFIR if damages are being sought for personal injury caused by negligence of the insured and how the claims were settled. Attorneys are required to submit these data on OFIR Forms A and B.

- **The Policy Division** develops and implements regulatory policy, performs research and analysis of regulatory related issues, and handles legislative matters.

### *1.020 Scope of Work and Deliverables*

**1.021 In Scope**

**Enterprise Monitoring Division: Property/Casualty and Life/Health Actuarial Services to Analyze and Opine to the Adequacy of the Reserves**

When specific company examinations require actuarial services, the OFIR Program Manager will prepare a written work statement detailing the line items where the State needs an actuary to analyze and opine to the adequacy of the reserves. Also, there are some examinations where several members within an insurance holding company are being examined at the same time. One property and casualty Contractor will be awarded all property and casualty companies within the insurance holding company and one life and health Contractor will be awarded all life and health companies within the insurance holding company. Each statement of work will be initiated by the project manager and submitted via e-mail to all Contractors. Each statement of work will contain the following information:

- Name of company to be analyzed
- The last examination period
- Period to be covered by this examination
- Items needing analysis
- Excerpts from Company's Annual Statement and Actuarial
- Opinion.

The Contractors will have two weeks to submit, via e-mail, a work plan in response to the work statement. Contractors will respond to the statement of work with a task proposal by the date specified in the statement of work. In detailing costs, the Contractor must not exceed the hourly rate included in their original response. Each Task proposal must include the following:

1. Introduction – statement of the assignment;
2. End product of the assignment;
3. Services to be provided (activities, tasks and individuals assigned to each task or activity)
4. Background information and relevant specific experience of Contractor and names, experience and resumes of individuals assigned to the project; and
5. Detail of Costs:
   - Indicating who will be assigned
   - The hours they will be assigned
   - The hourly rate
   - Travel costs*
   - Total cost

*Travel costs will be billed at state rates in effect at the time the expense is incurred. Travel costs should include any costs that may be incurred by the Contractor during the normal course of the examination. Should the Contractor be required to defend their findings at a hearing, OFIR will reimburse the Contractor for any specific travel costs incurred while defending the findings. This reimbursement is in addition to the total cost bid and accepted by OFIR. Travel costs incurred for defending the Contractor's findings will only be reimbursed if prior approval for the travel is received from the Project Manager.

The pre-qualified Contractor that presents the Best Value to the State of Michigan will be selected to perform the analysis. Whenever possible, OFIR will ensure that no Contractor will be awarded a Contract to examine a company that they examined during the last state audit. Persons/Contractors selected may be expected to begin work one week following the receipt of a Contract release. Should none of the Contractors offer an acceptable proposal, the State may pursue acquisition of services from other Contractors. The OFIR may interview the proposed staff before making a final decision on the award of an analysis/examination.

**Licensing and Product Review Division: Property/Casualty Rate Review Actuarial Services**
When specific company rate reviews require actuarial services, the OFIR Program Manager will prepare a written work statement detailing the work to be performed by the Contractor. OFIR must have the Contractor complete each actuarial evaluation quickly due to rate filing effective date time frames and the harm caused by unjustified insurance rates remaining in the market. The Contractor must understand the requirement for tight timeframes for the delivery of analysis, actuarial opinions, and final reports. It will be necessary for the Contractor to work closely with OFIR staff. Work performed will be on an "as-needed" basis, and each project will be wholly dependent on the need for analysis to be performed as outlined herein.

**Supervisory Affairs and Insurance Monitoring Division: Insurance Code Section 830(3) and Other Reviews**
These "Other Reviews" (requested by domestics under Section 830(3) of the Michigan Insurance Code) include, but are not limited to, changes in actuarial methodologies or changes in actuarially determined balances; concerns regarding adequacy of reserving or cash flow testing; analysis of reinsurance transactions and agreements; consulting on legislative changes (i.e. principles based reserving); evaluating value of business acquired proposals in accordance with MCL 500.1305; and, reviewing risk-based capital calculations.

When specific company reviews require actuarial services, the OFIR Program Manager will prepare a written work statement detailing the work to be performed by the Contractor.

**Health Plans Division: Life/Health Actuary for Rate Reviews**
The Health Plans Division of the Office of Financial and Insurance Regulation (OFIR) needs a life and health actuary to opine to the adequacy and actuarially sound basis of rates filed by health care entities for its individual lines of business. Those lines include the various products offered.

Upon submission of rate filings, OFIR has 30 days to determine whether the data submitted in these filings is complete. Once the filings are determined to be complete, OFIR has 60 days to determine whether the filings comply with all statutory standards found in the Act. On the 60th day, the Commissioner must determine whether the filing may be approved, disapproved, or approved with modifications.

When specific company reviews require actuarial services, the OFIR Program Manager will prepare a written work statement detailing the work to be performed by the Contractor.

**Various Divisions, as Needed: Other and Particular Line Actuarial Services**
OFIR internal staff will utilize the Contracts to satisfy a variety of needs for actuarial expertise as set forth below:

- Medical Malpractice
- Liquor Liability
- Reviews of Mortality Tables
- Other statutory reports

When specific actuarial services are required, the OFIR Program Manager will prepare a written work statement detailing the work to be performed by the Contractor.

**Policy Division: Statutory Reports and Public Policy and Research Actuarial Services**
OFIR is frequently presented with complicated public policy proposals developed by industry proponents that rely on actuarial analysis of company data. Having the ability to independently evaluate these public policy proposals, and test the actuarial and/or economic modeling and assumptions used, would be of great benefit to the State.

The Contractor should understand that tight timeframes for delivery of analysis would be required. Because time is of the essence in performing the duties associated with this Contract, it will be necessary for the Contractor to work closely with OFIR staff to accurately and specifically identify:

- What information resources are required to perform the task
- What information OFIR is required to provide or obtain
- What are the timeframes in which deliverables will be provided
- In what form the final project product will take (report; analysis memo; spreadsheet; etc.)

Work performed will be on "as-needed" basis, and project frequency will be wholly dependent on the need for analysis to be performed as outlined herein. When specific actuarial services are required, the OFIR Program Manager will prepare a written work statement detailing the work to be performed by the Contractor.

**1.022 Work and Deliverable**
Contractor must provide Services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

**Enterprise Monitoring Division: Property/Casualty and Life/Health Actuarial Services to Analyze and Opine to the Adequacy of the Reserves**
A. Review and opine on actuarial items in connection with financial examinations of domestic insurance companies, including Canadian and alien insurance companies using Michigan as the state of entry into the United States or other liabilities or assets specifically determined by OFIR which need to be reviewed by an actuary.

B. The actuarial items to be reviewed may include, but are not limited to, policy reserves, policy holder dividend scales and philosophy, tax liability, product features, risk based capital and surplus requirements, cash flow tests, asset adequacy testing, and loss adjustment expense reserves.

C. The actuary is responsible for reconciling all the data provided by the company back to the annual statement. Specifically, the property and casualty actuary must tie its loss data back to Schedule P, Part I.

D. The liabilities and assets to be reviewed and certified by the Contractor will be determined at the beginning of each examination. The Contractor must use, if available, the company's actuarial opinion, report and work papers to the greatest extent possible without compromising the Contractor's responsibility to perform the necessary tests to render his/her opinion on the agreed upon areas as defined in the work statement.

E. The Contractor must work closely with the examiner-in-charge (EIC) and other staff assigned to the examination to ensure the appropriate underlying master file and other data used by the Contractor in rendering their opinion is tested for completeness and accuracy by the OFIR staff. The Contractor must give the EIC progress reports throughout the examination. These reports can be verbal. The Contractor must immediately notify the EIC of any exceptions and important issues.

F. It is imperative that the Contractor not be associated with (either financially or contractually) the entity regulated by OFIR to which the Contractor is providing services and that such a relationship not be entered into for two years prior to, during the life of and for two years after this Contract without the written consent of OFIR. Failure by the Contractor to comply with this provision may result in the cancellation of this (or future) Contract.

G. The reports and opinions for life and health entities must be signed by a Fellow of the Society of Actuaries (FSA); and reports and opinions for property and casualty entities must be signed by a Fellow of the Casualty Actuarial Society (FCAS). The fellow must play a significant role in the analysis and oversight of the project.

H. The Contractor must be available for meetings with the regulated entity and OFIR. Also, from time to time, the Contractor may be called upon to appear at a place designated by OFIR, to discuss the issues of an emergency nature on short notice. Further, the Contractor is required to be flexible in changing their work efforts to accommodate the concerns of OFIR. The Contractor must be prepared and available to defend the Contractor's findings in a hearing. The Contractor must be willing to testify as an expert witness and perform other tasks related to the area of expertise as needed.

I. The Contractor may be called upon to help OFIR analyze complex reinsurance agreements and transactions or any other special assignment, where actuarial assistance may be deemed necessary by OFIR.

J. From time to time, there may be special projects that may be performed on non-domestic insurers or in areas which may be considered beyond the scope of a routine examination, which the Contractor may be asked to provide to OFIR. The scope of the project or area will be defined by OFIR and agreed upon with the Contractor before the work begins.

K The actuary should be able to perform most of the analysis from their work location. Due to the nature of the life insurance products, actuaries should plan to make one visit on-site to the company. All visits by the actuary to the company being examined must be coordinated with the approval by the EIC.

L. The Contractor must comply with Section 222(4) of the Michigan Insurance Code regarding the confidentiality of all information and knowledge obtained by the Contractor during an examination of an entry under this Contract. Section 222(4) states, in part, "all work papers, correspondence, memoranda, reports, records and other written or oral information related to an examination report or an investigation shall be withheld from public inspection, shall be confidential, shall not be subject to subpoena, and shall not be divulged to any person, except as provided for in Section 222(4)". If the Contractor receives a subpoena for any information related to an examination under a Contract, the Contractor must contact OFIR immediately. The Contractor should also be aware of Section 226 of the Michigan Insurance Code that states, in part, a person appointed or acting under this act who discloses any fact or information that is confidential under this act is guilty of a misdemeanor, punishable by a fine of not more than $1,000, or imprisonment of not more than one year, or both.

M. All of the Contractor's work papers are the property of OFIR and should be sent to OFIR at the conclusion of the examination.

N. Contractor will not be allowed to bid on a company if the Contractor performed the analysis and review for OFIR during the last examination.

**Licensing and Product Review Division: Property/Casualty Rate Review Actuarial Services**

1) Rate Filing Actuarial Examination
   a) Contractor must examine, using sound actuarial principles in conjunction with Michigan law, the insurance company filing and other data submitted to determine whether or not the filing information and/or data justifies the classifications that will be used and the rates that will be charged. This would include, whenever possible, identifying the rates or rate levels that are justified based on the data contained in the filings. OFIR staff will forward the filing to be examined to the Contractor and the Contractor may be allowed to obtain information and data directly from the insurer being examined as long as it can be obtained quickly enough to meet the seven day project completion timeframe.

2) Review Michigan rating laws and regulations.
   Contractor must review and understand Michigan legal classification and rating requirements identified above in item 1.012 Background in order to properly complete actuarial examinations. Each separate project may identify other regulations the Contractor must take into account when examining filings and data and rendering an actuarial opinion.

3) Review rate filings and methodologies used by insurers of last resort
   The State may periodically ask the Contractor to review a filing submitted to OFIR by one of the "insurer or last resort" organizations to determine if its rates comply with the requirements in the Insurance Code. Also, the State may ask the Contractor to identify, describe, and render an actuarial opinion about other sound actuarial rating methodologies that could be utilized by the organizations to set rates that would better comply with Insurance Code requirements. These types of actuarial examinations may be given a longer time horizon for completion of the project as agreed upon by the OFIR and the Contractor.

4) Consult with OFIR staff
   The Contractor must be available for regular consultation on an ongoing basis, and work with OFIR staff to identify the form of the final project product (report; analysis memo; spreadsheet; etc.).

5) Information to be provided to Contractor by OFIR
   OFIR will fax, mail, or e-mail to the Contractor each specific rate, rule, and policy form filing submitted to OFIR by insurers, rating organizations, and other insurance entities and/or other information and data that it wants reviewed with a paragraph describing what it desires if necessary to augment items 1-4 above.

6) Project Cost and Projections
Unless OFIR specifically provides a longer time frame for response, the Contractor must submit within 48 hours of receipt of the OFIR fax, mail, or e-mail:
   a) A Work Order identifying the total hours and cost for completing an examination and report pertaining to the filing(s), information, and/or data along with the name and credentials of the supervising actuary. These amounts will be maximum "not to exceed" amounts. If the analysis takes less time, the Contractor must bill for the actual cost based on the predetermined charges identified in the proposal that was approved.

   b) A list of the services that any Subcontractor(s) will provide and the names, titles, and credentials of the Subcontractor's staff working on the project.

7) Commencement of examination
Contractor will begin work once the OFIR Project Manager reviews and agrees to terms with the Contractor and notifies the Contractor to begin the work.

8) Describe additional information necessary for insurance entities to show compliance
Contractor must describe additional information that should be provided by the insurer to OFIR in order to show compliance with Michigan rating laws and actuarial standards in case further examination of classifications and rates is deemed warranted by OFIR in the future. It will be necessary for the Contractor to keep the OFIR project manager abreast of the findings and pertinent information regarding the examination. After the initial actuarial opinion has been provided by the Contractor, the OFIR may request the Contractor to perform additional actuarial examination taking into consideration additional information provided by the insurer.

The Contractor must assist OFIR in drafting rules and regulations to properly regulate insurers and to assist OFIR in describing the type of information that is necessary to be submitted within filings that will be helpful completing the examination projects undertaken by the Contractor with regard to the accepted proposal under the second tier, competitive bid process.

9) Provide actuarial examination report and certified opinion of compliance or non-compliance
For each project/filing, the Contractor will provide an actuarial examination report and certified opinion of compliance or non-compliance and/or a certified opinion in line with OFIR's examination request.

10) Present findings to OFIR non-actuarial analytical staff
Provide presentation to OFIR staff and other parties designated by OFIR to attend the presentation. The goal of this meeting is to acquaint each person with the actuarial reports and help them use the findings to communicate reasons for disapproval or withdrawal of approval for classifications and rates that are not actuarially sound and in compliance with Michigan classification and rating laws.

11) Provide expert actuarial testimony
The Contractor's supervising actuary and/or staff who worked on specific projects may be asked to provide expert actuarial testimony in compliance cases and any legal challenges related to opinions rendered. The Michigan Attorney General's office may represent the Commissioner in any legal disputes or lawsuits and the Contractor may have to work directly with its staff concerning legal issues that relate to specific projects. The legal services expected to be provided by the Contractor with regard to examinations performed, reports submitted, and opinions rendered under the Contract will be specifically requested and monitored by OFIR. The Contractor must bill for the actual cost based on the predetermined charges identified in the proposal that was approved.

**Supervisory Affairs and Insurance Monitoring Division: Insurance Code Section 830(3) and Other Reviews**
Contractor must provide Services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

1. Review pending legislative or regulatory proposals.
2. Examine company data, data provided by OFIR and data available to Contractor.
3. Evaluate pending proposals in light of public policy objectives.
4. Provide analysis in the form of summaries, reports, spreadsheets, or as otherwise requested, within the agreed upon time frames.
5. Be available for regular consultation on an ongoing basis.
6. Be available to provide legislative testimony as needed.

**Health Plans Divisions: Life/Health Actuary for Rate Reviews**

The Contractor will be responsible for the following tasks:

- Review health entity rate filings and opining on all actuarial soundness and the rate filing requirements set forth in the Insurance Code and Nonprofit Health Care Reform Act.
- Perform a Completeness Determination within one week of receipt.
- Provide an Actuarial Opinion of rates as filed and/or determination of amended (if applicable) within 30 days following the completeness determination.
- Provide at least two copies of the finalized, written actuarial report and opinion to OFIR no later than one week after the actuarial firm receives approval from OFIR to finalize the report and opinion.
- Be available for questions and other consultation during the term of this Contract, as may be necessary through the rate review process of these filings.

**Various Divisions, as Needed: Other and Particular Line Actuarial Services**

The Contractor must submit various reports to the Commissioner of OFIR to analyze data of confidential records regarding medical malpractice insurance, liquor liability and other insurance lines. Tasks include:

1. Analyze data and records.
2. When necessary, compile claims experiences that have been filed with the Commissioner of OFIR.
3. When necessary, make recommendations concerning the medical malpractice insurance market in Michigan.
4. Submit a report containing recommendations for next steps and possible suggestions for further study. A key component of the report is the analysis of the claims data and conclusions that can be drawn from the data. OFIR is in possession of the data being requested to be analyzed.
5. Medical Malpractice analysis and reports must address the following:
   - Quantify the initial reports of court action (Form A) by county and specialty;
   - Total number of closed claims, indemnity and allocated expense payments on closed claims, by year;
   - Length of time from date of injury to date of closure;
   - Number of claims closed during each 180 day interval;
   - Indemnity by time interval between dates of injury and case closure;
   - Closed claims by year;
   - Closed claims by type of resolution;
   - Allocated expenses by time interval between dates of injury and case closure;
   - Closed claims by severity of injury;
   - Closed claims experience by county;
   - Closed claims experience by region (Upper Peninsula plus four quadrants of Lower Peninsula);
   - Closed claims experience by age;
   - Closed claims experience by injury;
   - Closed claims experience by race;
   - Closed claims by type of service, including birth-related injuries;
   - Closed claims by source of medical expense payment (self-insured, Medicare, PPO, Medicaid, etc.);
   - Graph indicating any identifiable trends from 2006-2007;
   - Identify problems, if any, with the quality of the data reported and to assess the overlap between the data required to be reported to OFIR and to the National Practitioner Data Bank;
   - A comparison of those submitting data in 2006 and those submitting data in 2007, detailing the providers in 2006, those in 2007, the constraints or expansion of the insurers, and the reasons for those constraints or expansions, including whether some of the providers have either merged or are providing other types of coverage; and
   - Trends over the years in the number of cases filed.

**Policy Division: Statutory Reports and Public Policy and Research Actuarial Services**

- What information resources are required to perform the task.
- What information OFIR is required to provide or obtain.
- What are the timeframes in which deliverables will be provided.
- In what form the final project product will take (report, analysis memo, spreadsheet, etc.)

### *1.030 Roles and Responsibilities*

**1.031 Contractor Staff, Roles, and Responsibilities**
For purposes of this Contract, key personal must be identified in the second tier, competitive selection process for the following:

**Enterprise Monitoring Division: Property/Casualty and Life/Health Actuarial Services to Analyze and Opine to the Adequacy of the Reserves**

**Licensing and Product Review Division: Property/Casualty Rate Review Actuarial Services**

**Supervisory Affairs and Insurance Monitoring Division: Insurance Code Section 830(3) and Other Reviews**

**Health Plans Division: Life/Health Actuary for Rate Reviews**

**Various Divisions, as Needed: Other and Particular Line Actuarial Services**

**Policy Division: Statutory Reports and Public Policy and Research Actuarial Services**

### *1.040 Project Plan*

**1.041 Project Plan Management**
The Contractor is to identify the project plan for each section highlighted and underlined below during the second tier, competitive selection process. Contractor must present project management plan, identifying methods, transition time (if applicable), tools and processes proposed to oversee the project, address issues/changes as they may arise, and keep the appropriate parties apprised of progress.

Contractor must provide a detailed work plan, identifying how it will accomplish the necessary work and provide the required Deliverables/Services. Contractor must include in its second tier, competitive selection proposal, a break down, by deliverable, task, resource, and number of hours, if available (as outlined in Section 1.022).

**Enterprise Monitoring Division: Property/Casualty and Life/Health Actuarial Services to Analyze and Opine to the Adequacy of the Reserves**
The Contractor will carry out this project under the direction and control of:

Bob Lamberjack, Chief Examiner
Office of Financial and Insurance Regulation
Michigan Department of Energy, Labor & Economic Growth
611 W. Ottawa Street
P.O. Box 30220
Lansing, Michigan 48909
(517) 335-1746
lamberjackr@michigan.gov

**Licensing and Product Review Division: Property/Casualty Rate Review Actuarial Services**
Contractor must provide:

1) A description of the services that will be provided for each project under this Contract in accordance with item **1.022 Work and Deliverables** above, including:

   a) Contractor's approach to completing insurance rate actuarial examinations based upon sound actuarial principles in conjunction with Michigan insurance law.

   b) The Technical Work Plan that it will use as a guide for each project will include the following:
      i) The Contractor's project organizational structure.
      ii) The Contractor's staffing table with names and title of personnel assigned to the project. This must be in agreement with staffing of original proposal. Necessary substitutions due to change of employment status and other unforeseen circumstances may only be made with prior approval of the State (CCI).

iii) The project breakdown showing sub-projects, activities and tasks, and resources required and allocated to each.
iv) The time-phased plan in the form of a graphic display, showing each event, task, and decision point in your work plan.

c) End product of the assignment (certified actuarial opinion that the classification and rates are or are not actuarially justified based on Michigan Law and generally accepted actuarial standards).

d) Type of staff it will generally assign to each project under this Contract. Also, for each separate work request it must identify each specific individual that will work on that project by:
i) Name
ii) Background and credentials
iii) Total amount of education and experience relevant to performing the requested insurance rate actuarial examination.
iv) Specific experience relevant to type of company being examined (i.e., that the supervising actuary be accredited to perform and opine on property casualty coverage when property casualty classifications and rates are being examined, etc.)

2) Detail of Costs by:

a) Staff assigned to project.
b) Estimated hours assigned for each project-staff person.
c) The hourly rate per staff person.
d) Travel costs (these costs will be billed at state rates in effect at the time the expense is incurred*).
e) Total projected costs for each separate examination project under this Contract.

*Note - The travel costs should include any costs that may be incurred by the Contractor during the normal course of the examination. Should the Contractor be required to defend their findings at a hearing, OFIR will reimburse the Contractor for any specific travel costs incurred while defending the findings. This reimbursement is in addition to the total cost bid and accepted by the OFIR. Travel costs must be approved by the OFIR CCI prior to incurring and only to defend the Contractor's findings, pursuant to the State of Michigan Travel policy, as listed on the travel web-site and cannot exceed those established by the Department of Civil Service for employee reimbursement; see: http://www.michigan.gov/dmb/0,1607,7-150-9141_13132---,00.html

3) If awarded the project assignment, Contractor will carry out this project under the direction and control of the OFIR and will:

a) Perform specific examination tests identified in the initial examination plan and other examination tests as deemed necessary throughout the course of the examination to determine rate justification in compliance with Michigan insurance laws, regulations and bulletins and generally accepted actuarial standards for the type of insurance being analyzed. At OFIR's request, the Contractor must explain analysis and results to OFIR staff and other parties approved by OFIR.

b) Work in conjunction with the OFIR CCI or other people designated by the OFIR Commissioner or Chief Deputy Commissioner.

c) As directed by OFIR, Communicate with staff or actuarial firms contracted by the insurer being examined in order to obtain pertinent information and details for making necessary actuarial justification and support judgments and rendering opinions.

d) Keep costs down to the lowest amount possible by using Contractor staff appropriately throughout the course of project work.

e) Document all work performed and examination findings in examination work-papers, ensuring that all analysis and work-papers generated during the examination meet its established analysis and work-paper quality standards, best practices for actuarial examination work, and OFIR work-paper standards (all work-papers will be reviewed by the Contractor's fully accredited supervising actuary and by the OFIR CCI or other people designated by the OFIR Commissioner or Chief Deputy Commissioner. All work-papers shall become the property of OFIR after the examination, even when the Contractor is allowed to maintain them).

f) Be responsible for using its own supplies and equipment to perform examinations and complete each project.

g) **Not** contact the insurance company about the project prior to the start of the examination without written authorization from OFIR.

h) Identify any items of non-compliance with state statutes and regulations that become apparent during the examination.

i) Identify any findings concerning how the insurer classification and rate development process could be improved. OFIR will make the final determination about which items should then be discussed with the insurer and whether that item should be included in the final examination report.

j) Work with, and under the direction of the OFIR CCI, or other people designated by the OFIR Commissioner or Chief Deputy Commissioner, to prepare a draft copy of the examination report.

k) Submit the examination report to OFIR within seven calendar days. Be prepared to submit work papers as requested by OFIR.

l) Make changes to the report as agreed to, following discussions with OFIR.

m) If necessary, be available for a meeting, telephone, and/or video conference with OFIR and the insurer examined to discuss any findings or comments arising from the examination. After the meeting, adjust the draft report based subsequent pertinent information received by OFIR and submit the final draft report and management letter to OFIR within 10 calendar days of approval of the draft by the OFIR CCI or other people designated by the OFIR Commissioner or Chief Deputy Commissioner. In most instances, OFIR staff will communicate findings to the insurer(s) that were examined and the Contractor will only be involved if the insurer appeals the OFIR action that were taken based on the actuarial examination findings.

n) The Contractor must remain available to answer any inquiries concerning the examination and finding and must assist OFIR during any administrative or court proceedings involving the examination, findings, actuarial opinion, or any matter related to the Contractor's work under this Contract.

o) Upon notice by OFIR, the Contractor must appear, or be available to appear for testimony in any administrative or court proceedings involving the examination reports, the examinations or any matter related to the Contractor's work under this Contract; OFIR will pay for this type of service outside the cost proposed under this Contract (See § Out of Scope); however, OFIR will only pay the individual hourly rates agreed to within this Contract. These services will only be provided at the request of the OFIR CCI or other people designated by the OFIR Commissioner or Chief Deputy Commissioner. A total agreed price will be determined before any services are rendered. No additional costs will be provided above the amount agreed to by the Contract Administrator.

p) OFIR may be audited by the State of Michigan Legislature's Office of the Auditor General. The Auditor General may desire to review the Contractor's work-papers. If OFIR is audited during this Contract period, the Contractor must remain available to answer any questions or provide any additional documentation requested by the auditor general's office. The Contractor only need only make its staff available at the request of the OFIR CCI or other people designated by the OFIR Commissioner or Chief Deputy Commissioner. OFIR will pay for this type service outside the cost proposed under this Contract. The rate charged by the Contractor for these services, however, must be the hourly rates agreed to in this Contract. A total estimated price per hour based on the Contractor's staff necessary to respond to the Auditor General's inquiry price will be estimated and approved by OFIR prior to the Contractor rendering this service.

q) OFIR will pay for all insurance rate actuarial examination services by the Contractor that are provided according to the terms of this Contract. The Contractor will not charge an insurance company being examined for work under this Contract.

The Contractor will carry out this project under the direction and control of:

Randy Parlor, Director
Product Review Section
Office of Financial and Insurance Regulation
Michigan Department of Energy, Labor & Economic Growth
611 W. Ottawa Street
P.O. Box 30220
Lansing, Michigan 48909
Phone: (517) 335-1712
Fax: (517) 373-0549
parlorr@michigan.gov

**Supervisory Affairs and Insurance Monitoring Division: Insurance Code Section 830(3) and Other Reviews**
The Contractor will carry out this project under the direction and control of:

Judy Weaver, Deputy Commissioner
Supervisory Affairs and Insurance Monitoring Division
Office of Financial and Insurance Regulation
Michigan Department of Energy, Labor & Economic Growth
611 W. Ottawa Street
P.O. Box 30220
Lansing, Michigan 48909
Phone: (517) 335-1742
Fax: (517) 241-4610
weaverj3@michigan.gov

**Health Plans Division: Life/Health Actuary for Rate Reviews**
The Contractor will carry out this project under the direction and control of:

Joan Moiles, Deputy Commissioner
Health Plans Division
Office of Financial and Insurance Regulation
Michigan Department of Energy, Labor & Economic Growth
611 W. Ottawa Street
P.O. Box 30220
Lansing, Michigan 48909
Phone: (517) 335-2053
Fax: (517) 241-4549
moilesj@michigan.gov

**Various Divisions, as Needed: Other and Particular Line Actuarial Services**
The Contractor will carry out this project under the direction and control of:

Rhonda S. Alvarado, Analyst
Human Resources/Budget Division
Office of Financial and Insurance Regulation
Michigan Department of Energy, Labor & Economic Growth
611 W. Ottawa Street
P.O. Box 30220
Lansing, Michigan 48909
Phone: (517) 335-1732
Fax: (517) 373-8674
alvarador@michigan.gov

**Policy Division: Statutory Reports and Public Policy and Research Actuarial Services**
The Contractor will carry out this project under the direction and control of:

Brian Sydnor, Manager
Research and Analysis Section
Policy Division
Office of Financial and Insurance Regulation
Michigan Department of Energy, Labor & Economic Growth
611 W. Ottawa Street
P.O. Box 30220
Lansing, Michigan 48909
Phone: (517) 373-4362
Fax: (517) 335-1727
sydnorb@michigan.gov

**1.042 Reports**
**Enterprise Monitoring Division: Property/Casualty and Life/Health Actuarial Services to Analyze and Opine to the Adequacy of the Reserves**
Upon awarding of an examination under the second tier competitive bid process, the Contractor must give the EIC progress reports throughout the examination. These reports can be verbal. The Contractor must immediately notify the EIC of any exceptions and important issues.

Although there will be continuous liaison with the Contractor team, the OFIR Contract Administrator will meet as needed with the Contractor's project manager for the purpose of receiving progress reports and providing necessary guidance to the Contractor in solving problems which arise.

**Licensing and Product Review Division: Property/Casualty Rate Review Actuarial Services**
Upon awarding of an examination under the second tier competitive bid process, the Contractor must submit a report within seven days of initiating the examination that identifies whether or not the filing submitted contained information and data showing that the classifications and/or rates are actuarially sound in compliance with Michigan law. These type of actuarial examinations identified in **1.022 Work and Deliverables, subsection 3) Review rate filings and methodologies used by insurers of last resort** may be given a longer time horizon for completion of the project as agreed upon by the OFIR and the Contractor. Each project report under this Contract must include the certified actuarial opinion, analysis statement, and necessary tools (spreadsheets, graphs, etc.) in an easy-to-read-and-understand format that helps OFIR staff communicate findings to the insurer and/or other parties via disapprovals, withdrawals of approvals of the filing, and/or other communications.

**Supervisory Affairs and Insurance Monitoring Division: Insurance Code Section 830(3) and Other Reviews**
Upon the issuance of a work statement under the second tier competitive bid process, Contractor proposal should provide a flowchart of the tasks that will be performed, the individual assigned to perform each task, and the time that will be spent in completing the task. The Contractor must specifically detail previous experience in projects of similar size and complexity, and the amount of work with similar projects. The proposal should also address how work will be performed and reports prepared in a timely manner.

The pricing must provide a breakdown of the total estimated number of hours to complete a project and the total cost of the certification, including travel costs. The travel costs should be provided as a separate amount added to the total cost of certification. The bid price will remain firm throughout the duration of the examination. Additional funds will not be paid due to cost overruns. This section pertains to the following areas:

**Health Plans Division: Life/Health Actuary for Rate Reviews**

**Various Divisions, as Needed: Other and Particular Line Actuarial Services**

**Policy Actuarial Services: Statutory Reports and Public Policy and Research Services**

***1.050 Acceptance***

**1.051 Criteria**
The following criteria will be used by the State to determine Acceptance of the Services or Deliverables provided under this SOW:

**Enterprise Monitoring Division: Property/Casualty and Life/Health Actuarial Services to Analyze and Opine to the Adequacy of the Reserves**
OFIR will require a deliverable work product in the form of an appropriately detailed written report and actuarial opinion for each assignment. The detailed report should adequately support the actuarial opinion. The report should include a discussion of the scope of the work performed and assumptions used, a summary of findings, any recommendations to the company for improving its system, loss developments, the accuracy of the aggregate reserves and other provisions for policy obligations and any other pertinent information used to render the opinion. The actuarial opinion should be in the format of and contain the information required by the NAIC Annual Statement Instructions. The final detailed report and opinion must be delivered to OFIR prior to the end of the on-site examination by OFIR staff examiners unless prior consent is given by OFIR. The Contractor must provide four copies of the report. The certification will not be attached or bound with the actuarial report, but must be a separate document. The actuarial opinion must be submitted with the actuarial report. The detailed report and supporting work papers will become part of OFIR work papers which are confidential and are only available to other parties as defined by specific statutes. The regulated entity will also have a copy of the actuarial report supporting the certification. The regulated entity may provide a copy of the actuarial report and opinion to its appointed actuary.

**Licensing and Product Review Division: Property/Casualty Rate Review Actuarial Services**
The OFIR Contract Project Manager or other people designated by the OFIR Commissioner or Chief Deputy Commissioner must submit a written or electronic communication to the Contractor that contains the insurance company filing/attachments, which identifies the specific project to be engaged pursuant to **1.022 Work and Deliverables** above.

The Contractor must acknowledge receipt of the communication and that work will begin immediately.

**Supervisory Affairs and Insurance Monitoring Division: Insurance Code Section 830(3) and Other Reviews**
The OFIR Contract Project Manager or other people designated by the OFIR Commissioner or Chief Deputy Commissioner must submit a written or electronic communication to the Contractor that contains the insurance company filing/attachments, which identifies the specific project to be engaged pursuant to **1.022 Work and Deliverables** above.

The Contractor must acknowledge receipt of the communication and that work will begin immediately.

**Health Plans Division: Life/Health Actuary for Rate Reviews**
The OFIR Contract Project Manager or other people designated by the OFIR Commissioner or Chief Deputy Commissioner must submit a written or electronic communication to the Contractor that contains the insurance company filing/attachments, which identifies the specific project to be engaged pursuant to **1.022 Work and Deliverables** above.

The Contractor must acknowledge receipt of the communication and that work will begin immediately.

**Various Divisions, as Needed: Other and Particular Line Actuarial Services**
The OFIR Contract Project Manager or other people designated by the OFIR Commissioner or Chief Deputy Commissioner shall submit a written or electronic communication to the Contractor that contains the insurance company filing/attachments, which identifies the specific project to be engaged pursuant to **1.022 Work and Deliverables** above.

The Contractor must acknowledge receipt of the communication and that work will begin immediately.

**Policy Division: Statutory Reports and Public Policy and Research Actuarial Services**
The OFIR Contract Project Manager or other people designated by the OFIR Commissioner or Chief Deputy Commissioner shall submit a written or electronic communication to the Contractor that contains the insurance company filing/attachments, which identifies the specific project to be engaged pursuant to **1.022 Work and Deliverables** above.

The Contractor must acknowledge receipt of the communication and that work will begin immediately.

**1.052 Final Acceptance**
Final Acceptance is when the project is completed and functions according to the requirements. Any intermediate acceptance of sub-deliverables does not complete the requirement of Final Acceptance.

## ***1.060 Proposal Pricing***

**1.061 Pricing**
Final pricing will be submitted via a second tier, competitive selection process.

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 the expense at the State's current travel reimbursement rates. See **www.michigan.gov/dmb** for current rates.

**1.062 Price Term**
Quoted prices submitted via a second tier, competitive selection process are firm for the entire length of the examination.

**1.063 Tax Excluded from Price**
(a) Sales Tax: For purchases made directly by the State, the State is exempt from State and Local Sales Tax. Prices must not include the taxes. Exemption Certificates for State Sales Tax will be furnished upon request.

(b) Federal Excise Tax: The State may be exempt from Federal Excise Tax, or the taxes may be reimbursable, if articles purchased under any resulting Contract are used for the State's exclusive use. Certificates showing exclusive use for the purposes of substantiating a tax-free, or tax-reimbursable sale will be sent upon request. If a sale is tax exempt or tax reimbursable under the Internal Revenue Code, prices must not include the Federal Excise Tax.

**1.064 Holdback**
The State will have the right to hold back, as a retainage, an amount equal to 25 percent of all amounts invoiced by Contractor for Services/Deliverables. The amounts held back will be released to Contractor after the State has granted Final Acceptance.

## ***1.070 Additional Requirements***

**1.071 Additional Terms and Conditions specific to this Contract – Deleted – N/A**

## Article 2, Terms and Conditions

### *2.000 Contract Structure and Term*

**2.001 Contract Term**
This Contract is for a period of three years beginning December 1, 2009 through November 30, 2012. All outstanding Purchase Orders must also expire upon the termination (cancellation for any of the reasons listed in **Section 2.150**) of this Contract, unless otherwise extended under this Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of this Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

**2.002 Options to Renew**
This Contract may be renewed in writing by mutual agreement of the parties not less than 30 days before its expiration. This Contract may be renewed for up to two additional one year periods.

**2.003 Legal Effect**
Contractor must show acceptance of this Contract by signing two copies of this Contract and returning them to the Contract Administrator. The Contractor must not proceed with the performance of the work to be done under this Contract, including the purchase of necessary materials, until both parties have signed this Contract to show acceptance of its terms, and the Contractor receives a Contract release/purchase order that authorizes and defines specific performance requirements.

Except as otherwise agreed in writing by the parties, the State assumes no liability for costs incurred by Contractor or payment under this Contract, until Contractor is notified in writing that this Contract (or Change Order) has been approved by the State Administrative Board (if required), approved and signed by all the parties, and a Purchase Order against this Contract has been issued.

**2.004 Attachments & Exhibits**
All Attachments and Exhibits affixed to any and all Statement(s) of Work, or appended to or referencing this Contract, are incorporated in their entirety and form part of this Contract.

**2.005 Ordering**
The State will issue a written Purchase Order, Blanket Purchase Order, Direct Voucher or Procurement Card Order, which must be approved by the Contract Administrator or the Contract Administrator's designee, to order any Services/Deliverables under this Contract. All orders are subject to the terms and conditions of this Contract. No additional terms and conditions contained on either a Purchase Order or Blanket Purchase Order apply unless they are also specifically contained in that Purchase Order's or Blanket Purchase Order's accompanying Statement of Work. Exact quantities to be purchased are unknown; however, the Contractor must furnish all such materials and services as may be ordered during this Contract period. Quantities specified, if any, are estimates based on prior purchases, and the State is not obligated to purchase in these or any other quantities.

**2.006 Order of Precedence**
(a) This Contract, including any Statements of Work and Exhibits, to the extent not contrary to this Contract, each of which is incorporated for all purposes, constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior agreements, whether written or oral, with respect to the subject matter and as additional terms and conditions on the purchase order must apply as limited by **Section 2.005.**

(b) In the event of any inconsistency between the terms of this 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 this Contract, which may be modified or amended only by a formal Contract amendment.

**2.007 Headings**
Captions and headings used in this 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 this Contract.

**2.008 Form, Function & Utility**
If this Contract is for use of more than one State agency and if the Deliverable/Service does not the meet the form, function, and utility required by that State agency, that agency may, subject to State purchasing policies, procure the Deliverable/Service from another source.

**2.009 Reformation and Severability**
Each provision of this Contract is severable from all other provisions of this Contract and, if one or more of the provisions of this Contract is declared invalid, the remaining provisions of this Contract remain in full force and effect.

**2.010 Consents and Approvals**
Except as expressly provided otherwise in this Contract, if either party requires the consent or approval of the other party for the taking of any action under this Contract, the consent or approval must be in writing and must not be unreasonably withheld or delayed.

**2.011 No Waiver of Default**
If a party fails to insist upon strict adherence to any term of this Contract then the party has not waived the right to later insist upon strict adherence to that term, or any other term, of this Contract.

**2.012 Survival**
Any provisions of this Contract that impose continuing obligations on the parties, including without limitation the parties' respective warranty, indemnity and confidentiality obligations, survive the expiration or termination of this Contract for any reason. Specific references to survival in this Contract are solely for identification purposes and not meant to limit or prevent the survival of any other section.

***2.020 Contract Administration***

**2.021 Issuing Office**
This Contract is issued by the Department of Management and Budget, Purchasing Operations, and Office of Financial and Insurance Services (collectively, including all other relevant State of Michigan departments and agencies, the "State"). Purchasing Operations is the sole point of contact in the State with regard to all procurement and Contractual matters relating to this Contract. Purchasing Operations **is the only State office authorized to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of this Contract.** The Contractor Administrator within Purchasing Operations for this Contract is:

Lance Kingsbury
Department of Management and Budget – Purchasing Operations
Mason Bldg, 2nd Floor
PO Box 30026
Lansing, MI 48909
Email: kingsburyl@michigan.gov
Phone: 517.241.3768

**2.022 Contract Compliance Inspector**
After DMB-Purchasing Operations receives this properly executed Contract, it is anticipated that the Director of Purchasing Operations, in consultation with Office of Financial and Insurance Services will direct the person named below, or any other person so designated, to monitor and coordinate the activities for this Contract on a day-to-day basis during its term. However, monitoring of this Contract implies **no authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions and specifications of this Contract as that authority is retained by DMB Purchasing Operations**. The CCI for this Contract is:

Rhonda S. Mackie, Analyst
Human Resources/Budget Division
Office of Financial and Insurance Services
Department of Energy, Labor and Economic Growth
611 W. Ottawa Street, P.O. Box 30220
Lansing, MI 48909
e-mail: alvarador@michigan.gov
Phone: 517.335.1732 - Fax: 517.373.8674

**2.023 Project Manager**
Refer to Section 1.041 Project Plan Management for list of Project Managers.

**2.024 Change Requests**
The State reserves the right to request, from time to time, any changes to the requirements and specifications of this Contract and the work to be performed by the Contractor under this Contract. During the course of ordinary business, it may become necessary for the State to discontinue certain business practices or create Additional Services/Deliverables. 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 services/deliverables, timeframes, listing of key personnel assigned, estimated hours for each individual per task, and a complete and detailed cost justification.

If the Contractor does not so notify the State, the Contractor has no right to claim thereafter that it is entitled to additional compensation for performing that service or providing that deliverable.

Change Requests:

(a) By giving Contractor written notice within a reasonable time, the State must 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 must be prepared and issued under this Contract, describing the Change and its effects on the Services and any affected components of this Contract (a "Contract Change Notice").

(b) No proposed Change may be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the Department of Management and Budget, Purchasing Operations.

(c) If the State requests or directs the Contractor to perform any activities that Contractor believes constitute a Change, the Contractor must notify the State that it believes the requested activities are a Change before beginning to work on the requested activities. If the Contractor fails to notify the State before beginning to work on the requested activities, then the Contractor waives any right to assert any claim for additional compensation or time for performing the requested activities. If the Contractor commences performing work outside the scope of this Contract and then ceases performing that work, the Contractor must, at the request of the State, retract any out-of-scope work that would adversely affect this Contract.

**2.025 Notices**
Any notice given to a party under this Contract must be deemed effective, if addressed to the State contact as noted in Section 2.021 and the Contractor's contact as noted on the cover page of this Contract, 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 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.

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

**2.026 Binding Commitments**
Representatives of Contractor must have the authority to make binding commitments on Contractor's behalf within the bounds set forth in this Contract. Contractor may change the representatives from time to time upon written notice.

**2.027 Relationship of the Parties**
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 must be deemed to be an employee, agent or servant of the State for any reason. Contractor is solely and entirely responsible for its acts and the acts of its agents, employees, servants and Subcontractors during the performance of this Contract.

**2.028 Covenant of Good Faith**
Each party must act reasonably and in good faith. Unless stated otherwise in this Contract, the parties must 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 this Contract.

**2.029 Assignments**

(a) Neither party may assign this Contract, or assign or delegate any of its duties or obligations under this 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 this Contract to any other State agency, department, division or department without the prior consent of Contractor and Contractor may assign this Contract to an affiliate so long as the affiliate is adequately capitalized and can provide adequate assurances that the affiliate can perform the requirements of this Contract. The State may withhold consent from proposed assignments, subcontracts, or novations when the transfer of responsibility would operate to decrease the State's likelihood of receiving performance on this 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 this Contract. If the State permits an assignment, the Contractor is not relieved of its responsibility to perform any of its contractual duties, and the requirement under this Contract that all payments must be made to one entity continues.

(c) If the Contractor intends to assign this Contract or any of the Contractor's rights or duties under this Contract, the Contractor must notify the State in writing at least 90 days before the assignment. The Contractor also must provide the State with adequate information about the assignee within a reasonable amount of time before the assignment for the State to determine whether to approve the assignment.

## ***2.030 General Provisions***

**2.031 Media Releases**

News releases (including promotional literature and commercial advertisements) pertaining to this Contract or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions from the State. No results of the activities associated with this Contract are to be released without prior written approval of the State and then only to persons designated.

**2.032 Contract Distribution**

Purchasing Operations retains the sole right of Contract distribution to all State agencies and local units of government unless other arrangements are authorized by Purchasing Operations.

**2.033 Permits**

Contractor must 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 must pay for all costs and expenses incurred in obtaining and maintaining any necessary easements or right of way.

**2.034 Website Incorporation**

The State is not bound by any content on the Contractor's website, even if the Contractor's documentation specifically referenced that content and attempts to incorporate it into any other communication, unless the State has actual knowledge of the content and has expressly agreed to be bound by it in a writing that has been manually signed by an authorized representative of the State.

**2.035 Future Bidding Preclusion**

Contractor acknowledges that, to the extent this Contract involves the creation, research, investigation or generation of a future RFP, it may be precluded from bidding on the subsequent RFP. The State reserves the right to disqualify any bidder if the State determines that the bidder has used its position (whether as an incumbent Contractor, or as a Contractor hired to assist with the RFP development, or as a Vendor offering free assistance) to gain a competitive advantage on the RFP.

**2.036 Freedom of Information**

All information in any proposal submitted to the State by Contractor and this Contract is subject to the provisions of the Michigan Freedom of Information Act, 1976 PA 442, MCL 15.231, et seq (the "FOIA").

**2.037 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, Contractor personnel dedicated to providing Services/Deliverables under this Contract must provide the State with priority service for repair and work around in the event of a natural or man-made disaster.

## *2.040 Financial Provisions*

**2.041 Fixed Prices for Services/Deliverables**
Each Statement of Work or Purchase Order issued under this Contract must specify (or indicate by reference to the appropriate Contract Exhibit) the firm, fixed prices for all Services/Deliverables, and the associated payment milestones and payment amounts. The State may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.

**2.042 Adjustments for Reductions in Scope of Services/Deliverables**
If the scope of the Services/Deliverables under any Statement of Work issued under this Contract is subsequently reduced by the State, the parties must negotiate an equitable reduction in Contractor's charges under such Statement of Work commensurate with the reduction in scope.

**2.043 Services/Deliverables Covered**
For all Services/Deliverables to be provided by Contractor (and its Subcontractors, if any) under this Contract, the State must not be obligated to pay any amounts in addition to the charges specified in this Contract.

**2.044 Invoicing and Payment – In General**
(a) Each Statement of Work issued under this Contract must list (or indicate by reference to the appropriate Contract Exhibit) the prices for all Services/Deliverables, equipment and commodities to be provided, and the associated payment milestones and payment amounts.

(b) Each Contractor invoice must show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements. Invoices for Services performed on a time and materials basis must show, for each individual, the number of hours of Services performed during the billing period, the billable skill/labor category for such person and the applicable hourly billing rate. Prompt payment by the State is contingent on the Contractor's invoices showing the amount owed by the State minus any holdback amount to be retained by the State in accordance with **Section 1.064**.

(c) Correct invoices will be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 PA 279, MCL 17.51 et seq., within 45 days after receipt, provided the State determines that the invoice was properly rendered.

**2.045 Pro-ration**
To the extent there are any Services that are to be paid for on a monthly basis, the cost of such Services must be pro-rated for any partial month.

**2.046 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 this Contract.

**2.047 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 this 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 this 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 this Contract must constitute a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still unsettled.

**2.048 Electronic Payment Requirement**
Electronic transfer of funds is required for payments on State contracts. The Contractor must register with the State electronically at http://www.cpexpress.state.mi.us. As stated in 1984 PA 431, all contracts that the State enters into for the purchase of goods and services must provide that payment will be made by Electronic Fund Transfer (EFT).

## *2.050 Taxes*

### 2.051 Employment Taxes
Contractors are expected to collect and pay all applicable federal, state, and local employment taxes.

### 2.052 Sales and Use Taxes
Contractors are required to be registered and to remit sales and use taxes on taxable sales of tangible personal property or services delivered into the State. Contractors that lack sufficient presence in Michigan to be required to register and pay tax must do so as a volunteer. This requirement extends to: (1) all members of any controlled group as defined in § 1563(a) of the Internal Revenue Code and applicable regulations of which the company is a member, and (2) all organizations under common control as defined in § 414(c) of the Internal Revenue Code and applicable regulations of which the company is a member that make sales at retail for delivery into the State are registered with the State for the collection and remittance of sales and use taxes. In applying treasury regulations defining "two or more trades or businesses under common control" the term "organization" means sole proprietorship, a partnership (as defined in § 701(a)(2) of the Internal Revenue Code), a trust, an estate, a corporation, or a limited liability company.

## *2.060 Contract Management*

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

### 2.062 Contractor Key Personnel
(a) The Contractor must provide the CCI with the names of the Key Personnel.

(b) Key Personnel must be dedicated as defined in the Statement of Work 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.

(c) The State reserves 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 must notify the State of the proposed assignment, must introduce the individual to the appropriate State representatives, and must provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State must provide a written explanation including reasonable detail outlining the reasons for the rejection.

(d) Contractor must not remove any Key Personnel from their assigned roles on this Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal ("Unauthorized Removal"). Unauthorized Removals does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation, or for cause termination of the Key Personnel's employment. Unauthorized Removals does not include replacing Key Personnel because of promotions or other job movements allowed by Contractor personnel policies or Collective Bargaining Agreement(s) as long as the State receives prior written notice before shadowing occurs and Contractor provides 30 days of shadowing unless parties agree to a different time period. The Contractor with the State must review any Key Personnel replacements and appropriate transition planning must be established. Any Unauthorized Removal may be considered by the State to be a material breach of this Contract, in respect of which the State may elect to exercise its termination and cancellation rights.

(e) The Contractor must notify the CCI and the Contract Administrator at least 10 business days before redeploying non-Key Personnel, who are dedicated to primarily to the Project, to other projects. If the State does not object to the redeployment by its scheduled date, the Contractor may then redeploy the non-Key Personnel.

**2.063 Re-assignment of Personnel at the State's Request**
The State reserves the right to require the removal from the Project of Contractor personnel found, in the judgment of the State, to be unacceptable. The State's request must be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request must be based on legitimate, good-faith reasons. Replacement personnel for the removed person must 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 incident with removed personnel results in delay not reasonably anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Service will not be counted for a time as agreed to by the parties.

**2.064 Contractor Personnel Location**
All staff assigned by Contractor to work on this Contract will perform their duties either primarily at Contractor's offices and facilities or at State facilities. Without limiting the generality of the foregoing, Key Personnel will, at a minimum, spend at least the amount of time on-site at State facilities as indicated in the applicable Statement of Work. Subject to availability, selected Contractor personnel may be assigned office space to be shared with State personnel.

**2.065 Contractor Identification**
Contractor employees must be clearly identifiable while on State property by wearing a State-issued badge, as required. Contractor employees are required to clearly identify themselves and the company they work for whenever making contact with State personnel by telephone or other means.

**2.066 Cooperation with Third Parties**
Contractor must 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. As reasonably requested by the State in writing, the Contractor must provide to the State's agents and other contractors reasonable access to Contractor's Project personnel, systems and facilities to the extent the access relates to activities specifically associated with this Contract and will not interfere or jeopardize the safety or operation of the systems or facilities. The State acknowledges that Contractor's time schedule for this Contract is very specific and must not unnecessarily or unreasonably interfere with, delay, or otherwise impede Contractor's performance under this Contract with the requests for access.

**2.067 Contractor Return of State Equipment/Resources**
The Contractor must return to the State any State-furnished equipment, facilities and other resources when no longer required for this Contract in the same condition as when provided by the State, reasonable wear and tear excepted.

**2.068 Contract Management Responsibilities**
The Contractor must assume responsibility for all contractual activities, whether or not that Contractor performs them. Further, the State considers the Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from this Contract. If any part of the work is to be subcontracted, this Contract must include a list of Subcontractors, including firm name and address, contact person and a complete description of work to be subcontracted. The State reserves the right to approve Subcontractors and to require the Contractor to replace Subcontractors found to be unacceptable. The Contractor is totally responsible for adherence by the Subcontractor to all provisions of this Contract. Any change in Subcontractors must be approved by the State, in writing, prior to such change.

***2.070 Subcontracting by Contractor***

**2.071 Contractor Full Responsibility**
Contractor has full responsibility for the successful performance and completion of all of the Services and Deliverables. The State will consider Contractor to be the sole point of contact with regard to all contractual matters under this Contract, including payment of any and all charges for Services and Deliverables.

**2.072 State Consent to Delegation**
Contractor must not delegate any duties under this Contract to a Subcontractor unless the Department of Management and Budget, Purchasing Operations has given written consent to such delegation. The State reserves 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 must be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request must be based on legitimate, good-faith reasons. Replacement Subcontractor(s) for the removed Subcontractor must 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 SLA for the affected Work will not be counted for a time agreed upon by the parties.

**2.073 Subcontractor Bound to Contract**
In any subcontracts entered into by Contractor for the performance of the Services, Contractor must require the Subcontractor, to the extent of the Services to be performed by the Subcontractor, to be bound to Contractor by the terms of this Contract and to assume toward Contractor all of the obligations and responsibilities that Contractor, by this 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 before providing them to the State. The management of any Subcontractor is the responsibility of Contractor, and Contractor must remain responsible for the performance of its Subcontractors to the same extent as if Contractor had not subcontracted such performance. Contractor must 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 perform any obligation under this Contract will not relieve Contractor of any obligations or performance required under this Contract.

**2.074 Flow Down**
Except where specifically approved in writing by the State on a case-by-case basis, Contractor must flow down the obligations in **Sections 2.031, 2.060, 2.100, 2.110, 2.120, 2.130, 2.200** in all of its agreements with any Subcontractors.

**2.075 Competitive Selection**
The Contractor must select Subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of this Contract.

***2.080 State Responsibilities***

**2.081 Equipment**
The State will provide only the equipment and resources identified in the Statements of Work and other Contract Exhibits.

**2.082 Facilities**
The State must designate space as long as it is available and as provided in the Statement of Work, to house the Contractor's personnel whom the parties agree will perform the Services/Deliverables at State facilities (collectively, the "State Facilities"). The Contractor must have reasonable access to, and, unless agreed otherwise by the parties in writing, must observe and comply with all rules and regulations relating to each of the State Facilities (including hours of operation) used by the 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 the Contractor's use, or to which the Contractor otherwise gains access in the course of performing the Services, for any purpose other than providing the Services to the State.

***2.090 Security***

**2.091 Background Checks**
On a case-by-case basis, the State may investigate the Contractor's personnel before they may 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. The investigations will include Michigan State Police Background checks (ICHAT) and may include 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. Any request for background checks will be initiated by the State and will be reasonably related to the type of work requested.

All Contractor personnel must comply with the State's security and acceptable use policies for State IT equipment and resources. See http://www.michigan.gov/dit. Furthermore, Contractor personnel must agree to the State's security and acceptable use policies before the Contractor personnel will be accepted as a resource to perform work for the State. The Contractor must present these documents to the prospective employee before the Contractor presents the individual to the State as a proposed resource. Contractor staff must comply with all Physical Security procedures in place within the facilities where they are working.

**2.092 Security Breach Notification**
If the Contractor breaches this Section, the Contractor must (i) promptly cure any deficiencies and (ii) comply with any applicable federal and state laws and regulations pertaining to unauthorized disclosures. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor must report to the State, in writing, any use or disclosure of Confidential Information, whether suspected or actual, other than as provided for by this Contract within 10 days of becoming aware of the use or disclosure or the shorter time period as is reasonable under the circumstances.

**2.093 PCI Data Security Requirements – Delete – NA**

***2.100 Confidentiality***

**2.101 Confidentiality**
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 must mean all non-public proprietary information of Contractor (other than Confidential Information of the State as defined below) which is marked confidential, restricted, proprietary, or with a similar designation. "Confidential Information" of the State must mean any information which is retained in confidence by the State (or otherwise required to be held in confidence by the State under applicable federal, state and local laws and regulations) or which, in the case of tangible materials provided to Contractor by the State under its performance under this Contract, is marked as confidential, proprietary, or with a similar designation by the State. "Confidential Information" excludes any information (including this Contract) that is publicly available under the Michigan FOIA.

**2.102 Protection and Destruction of Confidential Information**
The State and Contractor must 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 this 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 the other party's Confidential Information to the other party. Each party must limit disclosure of the other party's Confidential Information to employees and Subcontractors who must have access to fulfill the purposes of this Contract. Disclosure to, and use by, a Subcontractor is permissible where (A) use of a Subcontractor is authorized under this Contract, (B) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Subcontractor's scope of responsibility, and (C) Contractor obligates the Subcontractor in a written Contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor 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 the Confidential Information from unauthorized use or disclosure.

Promptly upon termination or cancellation of this Contract for any reason, Contractor must certify to the State that Contractor has destroyed all State Confidential Information.

**2.103 Exclusions**
Notwithstanding the foregoing, the provisions of **Section 2.100** will not apply to any particular information which the State or Contractor can demonstrate (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to 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 to it without an obligation of confidentiality; (iv) was received after disclosure to it from a third party who had a lawful right to disclose the information to it 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 2.100** will not apply to any particular Confidential Information to the extent the receiving party is required by law to disclose the 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 the disclosure as reasonably requested by the furnishing party.

**2.104 No Implied Rights**
Nothing contained in this Section must 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.

**2.105 Respective Obligations**
The parties' respective obligations under this Section must survive the termination or expiration of this Contract for any reason.

***2.110 Records and Inspections***

**2.111 Inspection of Work Performed**
The State's authorized representatives must at all reasonable times and with 10 days prior written request, have the right to enter Contractor's premises, or any other places, where the Services are being performed, and must have access, upon reasonable request, to interim drafts of Deliverables or work-in-progress. Upon 10 Days prior written notice and at all reasonable times, the State's representatives must be allowed to inspect, monitor, or otherwise evaluate the work being performed and to the extent that the access will not reasonably 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.

**2.112 Examination of Records**
For seven years after the Contractor provides any work under this Contract (the "Audit Period"), the State may examine and copy any of Contractor's books, records, documents and papers pertinent to establishing Contractor's compliance with this Contract and with applicable laws and rules. The State must notify the Contractor 20 days before examining the Contractor's books and records. The State does not have the right to review any information deemed confidential by the Contractor to the extent access would require the 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 this Contract.

**2.113 Retention of Records**
Contractor must maintain at least until the end of the Audit Period, all pertinent financial and accounting records (including time sheets and payroll records, information pertaining to this Contract, and to the Services, equipment, and commodities provided under this Contract) pertaining to this Contract according to generally accepted accounting principles and other procedures specified in this Section. Financial and accounting records must 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.

**2.114 Audit Resolution**
If necessary, the Contractor and the State will meet to review each audit report promptly after issuance. The Contractor must respond to each audit report in writing within 30 days from receipt of the report, unless a shorter response time is specified in the report. The Contractor and the State must develop, agree upon and monitor an action plan to promptly address and resolve any deficiencies, concerns, and/or recommendations in the audit report.

**2.115 Errors**
(a) If the audit demonstrates any errors in the documents provided to the State, then the amount in error must be reflected as a credit or debit on the next invoice and in subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried for more than four invoices. If a balance remains after four invoices, then the remaining amount will be due as a payment or refund within 45 days of the last quarterly invoice that the balance appeared on or termination of this Contract, whichever is earlier.

(b) In addition to other available remedies, the difference between the payment received and the correct payment amount is greater than 10 percent, then the Contractor must pay all of the reasonable costs of the audit.

### ***2.120 Warranties***

**2.121 Warranties and Representations**
The Contractor represents and warrants:

(a) It is capable in all respects of fulfilling and must fulfill all of its obligations under this Contract. The performance of all obligations under this Contract must be provided in a timely, professional, and workman-like manner and must meet the performance and operational standards required under this Contract.

(b) These Contract Appendices, Attachments and Exhibits identify the equipment and software and services necessary for the Deliverable(s) to perform and Services to operate in compliance with this Contract's requirements and other standards of performance.

(c) 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.

(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 Contractor's other responsibilities with respect to the items in this Contract, Contractor must assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.

(e) Contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into this Contract, on behalf of Contractor.

(f) It is qualified and registered to transact business in all locations where required.

(g) Neither the Contractor nor any affiliates, nor any employee of either, has, must have, or must 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 must notify the State about the nature of the conflict or appearance of impropriety within two days of learning about it.

(h) If any of the certifications, representations, or disclosures made in the Contractor's original bid response change after this Contract start date, the Contractor must report those changes immediately to the Department of Management and Budget, Purchasing Operations.

**2.122 Warranty of Merchantability – Deleted – NA**

**2.123 Warranty of Fitness for a Particular Purpose – Deleted – NA**

**2.124 Warranty of Title – Deleted – NA**

**2.125 Equipment Warranty – Deleted – NA**

**2.126 Equipment to be New – Deleted – NA**

**2.127 Prohibited Products – Deleted – NA**

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

***2.130 Insurance***

**2.131 Liability Insurance**

The Contractor must provide proof of the minimum levels of insurance coverage as indicated below. The insurance must 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 the 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 under this Contract.

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

The insurance must be written for not less than any minimum coverage specified in the Contract or required by law, whichever is greater.

The insurers selected by Contractor must have an A.M. Best rating of A or better, or as otherwise approved in writing by the State, or if the ratings are no longer available, with a comparable rating from a recognized insurance rating agency. All policies of insurance required in this Contract must be issued by companies that have been approved to do business in the State. See www.michigan.gov/deleg.

Where specific limits are shown, they are the minimum acceptable limits. If Contractor's policy contains higher limits, the State must be entitled to coverage to the extent of the higher limits.

The Contractor is required to pay for and provide the type and amount of insurance checked ☑ below:

☑ 1. Commercial General Liability with the following minimum coverage:

$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

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSUREDS on the Commercial General Liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

☑ 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 INSUREDS on the vehicle liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

☑ 3. Workers' compensation coverage must be provided according to applicable laws governing the employees and employers work activities in the state of the Contractor's domicile. If the applicable coverage is provided by a self-insurer, proof must be provided of approved self-insured authority by the jurisdiction of domicile. For employees working outside of the state of qualification, Contractor must provide appropriate certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.

Any certificates of insurance received must also provide a list of states where the coverage is applicable.

The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company. This provision must not be applicable where prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

☑ 4. Employers liability insurance with the following minimum limits:

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

**2.132 Subcontractor Insurance Coverage**
Except where the State has approved in writing a Contractor subcontract with other insurance provisions, Contractor must require all of its Subcontractors under this Contract to purchase and maintain the insurance coverage as described in this Section for the Contractor in connection with the performance of work by those Subcontractors. Alternatively, Contractor may include any Subcontractors under Contractor's insurance on the coverage required in this Section. Subcontractor must fully comply with the insurance coverage required in this Section. Failure of Subcontractor to comply with insurance requirements does not limit Contractor's liability or responsibility.

**2.133 Certificates of Insurance and Other Requirements**
Contractor must furnish to DMB-Purchasing Operations, certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). The Certificate must be on the standard "accord" form or equivalent. **THIS CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING.** All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) must contain a provision indicating that coverages afforded under the policies MUST NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED without 30 days prior written notice, except for 10 days for non-payment of premium, having been given to the Director of Purchasing Operations, Department of Management and Budget. The notice must include this Contract or Purchase Order number affected. Before this Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that the State and its agents, officers and employees are listed as additional insureds under each commercial general liability and commercial automobile liability policy. In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

The Contractor must maintain all required insurance coverage throughout the term of this Contract and any extensions and, in the case of claims-made Commercial General Liability policies, must secure tail coverage for at least three years following the expiration or termination for any reason of this Contract. The minimum limits of coverage specified above are not intended, and must not be construed, to limit any liability or indemnity of Contractor under this Contract to any indemnified party or other persons. Contractor is responsible for all deductibles with regard to the insurance. If the Contractor fails to pay any premium for required insurance as specified in this Contract, or if any insurer cancels or significantly reduces any required insurance as specified in this Contract without the State's written consent, then the State may, after the State has given the Contractor at least 30 days written notice, pay the premium or procure similar insurance coverage from another company or companies. The State may deduct any part of the cost from any payment due the Contractor, or the Contractor must pay that cost upon demand by the State.

***2.140 Indemnification***

**2.141 General Indemnification**
To the extent permitted by law, the Contractor must indemnify, defend and hold harmless the State from liability, 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.

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

**2.143 Employee Indemnification**
In any 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 this Contract must 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 provisions, 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 provisions.

**2.144 Patent/Copyright Infringement Indemnification**
To the extent permitted by law, the Contractor must 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 the 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 the equipment, software, commodity or service, or the use or reproduction of any documentation provided with the 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.

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 must at the Contractor's sole expense (i) procure for the State the right to continue using the equipment, software, commodity or service or, if the 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 the 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 has 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; (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.

**2.145 Continuation of Indemnification Obligations**
The Contractor's duty to indemnify under this Section continues in full force and effect, notwithstanding the expiration or early cancellation of this Contract, with respect to any claims based on facts or conditions that occurred before expiration or cancellation.

**2.146 Indemnification Procedures**
The procedures set forth below must apply to all indemnity obligations under this Contract.

(a) After the State receives notice of the action or proceeding involving a claim for which it will seek indemnification, the State must promptly notify Contractor of the 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 notify the Contractor relieves the Contractor of its indemnification obligations except to the extent that the Contractor can prove damages attributable to the failure. Within 10 days following receipt of written notice from the State relating to any claim, the Contractor must 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 before the State receiving Contractor's Notice of Election, the State is entitled to defend against the claim, at the Contractor's expense, and the Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during that period.

(b) If Contractor delivers a Notice of Election relating to any claim: (i) the State is entitled to participate in the defense of the claim and to employ counsel at its own expense to assist in the handling of the claim and to monitor and advise the State about the status and progress of the defense; (ii) the Contractor must, at the request of the State, demonstrate to the reasonable satisfaction of the State, the Contractor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) the Contractor must periodically advise the State about the status and progress of the defense and must obtain the prior written approval of the State before entering into any settlement of the claim or ceasing to defend against the claim;

and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State has the right, at its own expense, to control the defense of that portion of the claim involving the principles of Michigan governmental or public law. But the State may retain control of the defense and settlement of a claim by notifying the Contractor in writing within 10 days after the State's receipt of Contractor's information requested by the State under clause (ii) of this paragraph if the State determines that the Contractor has failed to demonstrate to the reasonable satisfaction of the State the Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State under 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.

(c) 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 may defend the claim in the 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 must promptly reimburse the State for all the reasonable costs and expenses.

## ***2.150 Termination/Cancellation***

### 2.151 Notice and Right to Cure

If the Contractor breaches this Contract, and the State, in its sole discretion, determines that the breach is curable, then the State must provide the Contractor with written notice of the breach and a time period (not less than 30 days) to cure the Breach. The notice of breach and opportunity to cure is inapplicable for successive or repeated breaches or if the State determines in its sole discretion that the breach poses a serious and imminent threat to the health or safety of any person or the imminent loss, damage, or destruction of any real or tangible personal property.

### 2.152 Termination for Cause

(a) The State may terminate this Contract, for cause, by notifying the Contractor in writing, if the Contractor (i) breaches any of its material duties or obligations under this Contract (including a Chronic Failure to meet any particular SLA), or (ii) fails to cure a breach within the time period specified in the written notice of breach provided by the State

(b) If this Contract is terminated for cause, the Contractor must pay all costs incurred by the State in terminating this 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/Deliverables required by this Contract from other sources. Re-procurement costs are not consequential, indirect or incidental damages, and cannot be excluded by any other terms otherwise included in this Contract, provided the costs are not in excess of 50% more than the prices for the Service/Deliverables provided under this Contract.

(c) If the State chooses to partially terminate this Contract for cause, charges payable under this Contract will be equitably adjusted to reflect those Services/Deliverables that are terminated and the State must pay for all Services/Deliverables for which Final Acceptance has been granted provided up to the termination date. Services and related provisions of this Contract that are terminated for cause must cease on the effective date of the termination.

(d) If the State terminates this Contract for cause under this Section, and it is determined, for any reason, that Contractor was not in breach of this Contract under the provisions of this section, that termination for cause must be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties must be limited to that otherwise provided in this Contract for a termination for convenience.

### 2.153 Termination for Convenience

The State may terminate this Contract for its convenience, in whole or part, if the State determines that a termination is in the State's best interest. Reasons for the termination must 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 this Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Services no longer practical or feasible, (c) unacceptable prices for Additional Services or New Work requested by the State, or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any RFP issued by the State. The State may terminate this Contract for its convenience, in whole or in part, by giving Contractor written notice at least 30 days before the date of termination.

If the State chooses to terminate this Contract in part, the charges payable under this Contract must be equitably adjusted to reflect those Services/Deliverables that are terminated. Services and related provisions of this Contract that are terminated for cause must cease on the effective date of the termination.

**2.154 Termination for 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 must 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 must give Contractor at least 30 days advance written notice of termination for non-appropriation or unavailability (or the time as is available if the State receives notice of the final decision less than 30 days before the funding cutoff).

(b) If funding for this Contract is reduced by law, or funds to pay Contractor for the agreed-to level of the Services or production of Deliverables to be provided by Contractor are not appropriated or otherwise unavailable, the State may, upon 30 days written notice to Contractor, reduce the level of the Services or the change the production of Deliverables in the manner and for the 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 the reduction.

(c) If the State terminates this Contract, eliminates certain Deliverables, or reduces the level of Services to be provided by Contractor under this Section, the State must pay Contractor for all Work-in-Process performed through the effective date of the termination or reduction in level, as the case may be and as determined by the State, to the extent funds are available. This Section will not preclude Contractor from reducing or stopping Services/Deliverables or raising against the State in a court of competent jurisdiction, any claim for a shortfall in payment for Services performed or Deliverables finally accepted before the effective date of termination.

**2.155 Termination for Criminal Conviction**

The State may terminate this 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 related to a State, public or private Contract or subcontract.

**2.156 Termination for Approvals Rescinded**

The State may terminate this Contract if any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services under Constitution 1963, Article 11, § 5, and Civil Service Rule 7-1. In that case, the State must pay the Contractor for only the work completed to that point under this Contract. 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 the written notice.

**2.157 Rights and Obligations upon Termination**

(a) If the State terminates this Contract for any reason, the Contractor must (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 this 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) transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables intended to be transferred to the State at the termination of this Contract and which are resulting from this Contract (which must be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of the items included compensation to Contractor for the provision of warranty services in respect of the 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) If the State terminates this Contract before its expiration for its own convenience, the State must pay Contractor for all charges due for Services provided before the date of termination and, if applicable, as a separate item of payment under this Contract, for Work In Process, on a percentage of completion basis at the level of completion determined by the State. All completed or partially completed Deliverables prepared by Contractor under this Contract, at the option of the State, becomes the State's property, and Contractor is entitled to receive equitable fair compensation for the Deliverables. Regardless of the basis for the termination, the State is not 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) Upon a good faith termination, the State may assume, at its option, any subcontracts and agreements for Services and Deliverables provided under this Contract, and may further pursue completion of the Services/Deliverables under this Contract by replacement contract or otherwise as the State may in its sole judgment deem expedient.

**2.158 Reservation of Rights**
Termination of this Contract or any Statement of Work issued under it by a party must be with full reservation of, and without prejudice to, any rights or remedies otherwise available to the party with respect to any claims arising before or as a result of the termination.

***2.160 Termination by Contractor***

**2.161 Termination by Contractor**
If the State breaches this Contract, and the Contractor in its sole discretion determines that the breach is curable, then the Contractor will provide the State with written notice of the breach and a time period (not less than 30 days) to cure the breach. The Notice of Breach and opportunity to cure is inapplicable for successive and repeated breaches.

The Contractor may terminate this Contract if the State (i) materially breaches its obligation to pay the Contractor undisputed amounts due and owing under this Contract, (ii) breaches its other obligations under this Contract to an extent that makes it impossible or commercially impractical for the Contractor to perform the Services, or (iii) does not cure the breach within the time period specified in a written notice of breach. But the Contractor must discharge its obligations under **Section 2.190** before it terminates this Contract.

***2.170 Transition Responsibilities***

**2.171 Contractor Transition Responsibilities**
If the State terminates this Contract, for convenience or cause, or if this Contract is otherwise dissolved, voided, rescinded, nullified, expires or rendered unenforceable, the Contractor agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. If this Contract expires or terminates, 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 180 days. These efforts must include, but are not limited to, those listed in **Sections 2.171, 2.172, 2.173, 2.174, and 2.175.**

**2.172 Contractor Personnel Transition**
The Contractor must 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 must 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 this Contract. In addition, during or following the transition period, in the event the State requires the Services of the Contractor's Subcontractors or vendors, 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 vendors. Contractor must notify all of Contractor's subcontractors of procedures to be followed during transition.

**2.173 Contractor Information Transition**
The Contractor agrees to provide reasonable detailed specifications for all Services/Deliverables needed by the State, or specified third party, to properly provide the Services/Deliverables required under this Contract. The Contractor must provide the State with asset management data generated from the inception of this Contract through the date on which the Contractor is terminated in a comma-delineated format unless otherwise requested by the State. The Contractor must deliver to the State any remaining owed reports and documentation still in Contractor's possession subject to appropriate payment by the State.

**2.174 Contractor Software Transition**
The Contractor must reasonably assist the State in the acquisition of any Contractor software required to perform the Services/use the Deliverables under this Contract. This must include any documentation being used by the Contractor to perform the Services under this Contract. If the State transfers any software licenses to the Contractor, those licenses must, upon expiration of this Contract, transfer back to the State at their current revision level. Upon notification by the State, Contractor may be required to freeze all non-critical changes to Deliverables/Services.

**2.175 Transition Payments**
If the transition results from a termination for any reason, reimbursement must be governed by the termination provisions of this Contract. 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) at the rates agreed upon by the State. The Contractor must prepare an accurate accounting from which the State and Contractor may reconcile all outstanding accounts.

**2.176 State Transition Responsibilities**
In the event that this 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:
(a) Reconciling all accounts between the State and the Contractor;
(b) Completing any pending post-project reviews.

***2.180 Stop Work***

**2.181 Stop Work Orders**
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 this Contract for a period of up to 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 must be identified as a stop work order and must indicate that it is issued under this **Section 2.180**. Upon receipt of the stop work order, Contractor must immediately comply with its terms and take all reasonable steps to minimize incurring 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 must either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order as provided in **Section 2.150**.

**2.182 Cancellation or Expiration of Stop Work Order**
The Contractor must resume work if the State cancels a Stop Work Order or if it expires. The parties will agree upon an equitable adjustment in the delivery schedule, this Contract price, or both, and this Contract must be modified, in writing, accordingly, if: (a) the stop work order results in an increase in the time required for, or in Contractor's costs properly allocable to, the performance of any part of this Contract; and (b) Contractor asserts its right to an equitable adjustment within 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 this Contract. Any adjustment must conform to the requirements of **Section 2.024**.

**2.183 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, the termination must be deemed to be a termination for convenience under **Section 2.150**, and the State will pay reasonable costs resulting from the stop work order in arriving at the termination settlement. For the avoidance of doubt, the State is not liable to Contractor for loss of profits because of a stop work order issued under this **Section 2.180.**

***2.190 Dispute Resolution***

**2.191 In General**
Any claim, counterclaim, or dispute between the State and Contractor arising out of or relating to this Contract or any Statement of Work must be resolved as follows. For all Contractor claims seeking an increase in the amounts payable to Contractor under this Contract, or the time for Contractor's performance, Contractor must submit a letter, together with all data supporting the claims, executed by Contractor's Contract Administrator or the Contract Administrator's designee certifying that (a) the claim is made in good faith, (b) 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 (c) the claim and the supporting data are current and complete to Contractor's best knowledge and belief.

**2.192 Informal Dispute Resolution**
(a) All disputes between the parties must be resolved under the Contract Management procedures in this Contract. If the parties are unable to resolve any disputes after compliance with the processes, the parties must meet with the Director of Purchasing Operations, DMB, or designee, for the purpose of attempting to resolve the dispute without the need for formal legal proceedings, as follows:

(i) The representatives of Contractor and the State must meet as often as the parties reasonably deem necessary 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 must 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 this Contract must be honored in order that each of the parties may be fully advised of the other's position.

(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 60 calendar days, the Director of Purchasing Operations, DMB, or designee, must issue a written opinion regarding the issue(s) in dispute within 30 calendar days. The opinion regarding the dispute must be considered the State's final action and the exhaustion of administrative remedies.

(b) This Section must 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 under **Section 2.193**.

(c) The State will not mediate disputes between the Contractor and any other entity, except state agencies, concerning responsibility for performance of work under this Contract.

**2.193 Injunctive Relief**

The only circumstance in which disputes between the State and Contractor will not be subject to the provisions of **Section 2.192** is where a party makes a good faith determination that a breach of the terms of this Contract by the other party is the that the damages to the 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.

**2.194 Continued Performance**

Each party agrees to continue performing its obligations under this Contract while a dispute is being resolved except to the extent the issue in dispute precludes performance (dispute over payment must not be deemed to preclude performance) and without limiting either party's right to terminate this Contract as provided in **Section 2.150**, as the case may be.

## ***2.200 Federal and State Contract Requirements***

**2.201 Nondiscrimination**

In the performance of this 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, or physical or mental disability. Contractor further agrees that every subcontract entered into for the performance of this Contract or any purchase order resulting from this Contract must contain a provision requiring non-discrimination in employment, as specified here, binding upon each Subcontractor. This covenant is required under the Elliot Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, et seq., and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, et seq., and any breach of this provision may be regarded as a material breach of this Contract.

**2.202 Unfair Labor Practices**

Under 1980 PA 278, MCL 423.321, et seq., the State must 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 under Section 2 of the Act. This information is compiled by the United States National Labor Relations Board. A Contractor of the State, in relation to this Contract, must not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Under Section 4 of 1980 PA 278, MCL 423.324, the State may void any Contract if, after 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.

**2.203 Workplace Safety and Discriminatory Harassment**
In performing Services for the State, the Contractor must comply with the Department of Civil Services Rule 2-20 regarding Workplace Safety and Rule 1-8.3 regarding Discriminatory Harassment. In addition, the Contractor must comply with Civil Service regulations and any applicable agency rules provided to the Contractor. For Civil Service Rules, see http://www.mi.gov/mdcs/0,1607,7-147-6877---,00.html.

**2.204 Prevailing Wage – Delete – NA**

***2.210 Governing Law***

**2.211 Governing Law**
This Contract must in all respects be governed by, and construed according to, 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.

**2.212 Compliance with Laws**
Contractor must comply with all applicable state, federal and local laws and ordinances in providing the Services/Deliverables.

**2.213 Jurisdiction**
Any dispute arising from this Contract must 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 the jurisdiction on the grounds of lack of personal jurisdiction of the court or the laying of venue of the 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.

***2.220 Limitation of Liability***

**2.221 Limitation of Liability**
Neither the Contractor nor the State is liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability does 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.

***2.230 Disclosure Responsibilities***

**2.231 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 or any litigation, investigations or proceedings under the Sarbanes-Oxley Act. 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 this Contract and extensions, to which Contractor (or, to the extent Contractor is aware, any Subcontractor) 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; or (ii) a claim or written allegation of fraud against Contractor or, to the extent Contractor is aware, any Subcontractor by a governmental or public entity arising out of their business dealings with governmental or public entities. The Contractor must disclose in writing to the Contract Administrator any litigation, investigation, arbitration or other proceeding (collectively, "Proceeding") within 30 days of its occurrence. Details of settlements which are prevented from disclosure by the terms of the settlement may be annotated. 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.

(b) Assurances. If any Proceeding disclosed to the State under this Section, or of which the State otherwise becomes aware, during the term of this Contract would cause a reasonable party to be concerned about:

(i) the ability of Contractor (or a Subcontractor) to continue to perform this Contract according to its terms and conditions, or

(ii) whether Contractor (or a Subcontractor) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in the Proceeding, which conduct would constitute a breach of this Contract or a violation of Michigan law, regulations or public policy, then the Contractor must provide the State all reasonable assurances requested by the State to demonstrate that:

(a) Contractor and its Subcontractors must be able to continue to perform this Contract and any Statements of Work according to its terms and conditions, and

(b) Contractor and its Subcontractors have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in the Proceeding.

(c) Contractor must make the following notifications in writing:

(1) Within 30 days of Contractor becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor must notify DMB Purchasing Operations.

(2) Contractor must also notify DMB Purchasing Operations within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.

(3) Contractor must also notify DMB Purchasing Operations within 30 days whenever changes to company affiliations occur.

**2.232 Call Center Disclosure**

Contractor and/or all Subcontractors involved in the performance of this Contract providing call or contact center services to the State must disclose the location of its call or contact center services to inbound callers. Failure to disclose this information is a material breach of this Contract.

**2.233 Bankruptcy**

The State may, without prejudice to any other right or remedy, terminate this Contract, in whole or in part, and, at its option, may take possession of the "Work in Process" and finish the Works in Process by whatever appropriate method the State may deem expedient if:

(a) the Contractor files for protection under the bankruptcy laws;

(b) an involuntary petition is filed against the Contractor and not removed within 30 days;

(c) the Contractor becomes insolvent or if a receiver is appointed due to the Contractor's insolvency;

(d) the Contractor makes a general assignment for the benefit of creditors; or

(e) the Contractor or its affiliates are unable to provide reasonable assurances that the Contractor or its affiliates can deliver the services under this Contract.

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 must be stored separately from other stock and marked conspicuously with labels indicating ownership by the State.

## ***2.240 Performance***

**2.241 Time of Performance**

(a) Contractor must use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables according to 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 2.241(a),** Contractor must 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 Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and must inform the State of the projected actual delivery date.

(c) If the Contractor believes that a delay in performance by the State has caused or will cause the Contractor to be unable to perform its obligations according to specified Contract time periods, the Contractor must notify the State in a timely manner and must use commercially reasonable efforts to perform its obligations according to this Contract time periods notwithstanding the State's failure. Contractor will not be in default for a delay in performance to the extent the delay is caused by the State.

**2.242 Service Level Agreements (SLAs) – Deleted – NA**

**2.243 Liquidated Damages – Deleted – NA**

**2.244 Excusable Failure**

Neither party will be liable for any default, damage, or delay in the performance of its obligations under this Contract to the extent the default, damage or delay is caused by government regulations or requirements (executive, legislative, judicial, military, or otherwise), power failure, 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; 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 a party; provided the non-performing party and its Subcontractors are without fault in causing the default or delay, and the 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.

If a party does not perform its Contractual obligations for any of the reasons listed above, the non-performing party will be excused from any further performance of its affected obligation(s) for as long as the circumstances prevail, but the party must use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay. A party must promptly notify the other party in writing immediately after the excusable failure occurs, and also when it abates or ends.

If any of the above-enumerated circumstances substantially prevent, hinder, or delay the Contractor's performance of the Services/provision of Deliverables for more than 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/Deliverables from an alternate source, and the State is not be liable for payment for the unperformed Services/ Deliverables not provided under this Contract for so long as the delay in performance continues; (b) the State may terminate any portion of this Contract so affected and the charges payable will be equitably adjusted to reflect those Services/Deliverables 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 the Contractor, except to the extent that the State must pay for Services/Deliverables provided through the date of termination.

The 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/Deliverables not provided 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 this 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.

***2.250 Approval of Deliverables***

**2.251 Delivery Responsibilities – Deleted – NA**

**2.252 Delivery of Deliverables**

Where applicable, the Statements of Work/POs 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. All Deliverables must be completed and delivered for State review and written approval and, where applicable, installed according to the State-approved delivery schedule and any other applicable terms and conditions of this Contract.

**2.253 Testing – Deleted – NA**

**2.254 Approval of Deliverables, In General**

(a) All Deliverables (Physical Deliverables and Written Deliverables) and Services require formal written approval by the State, according to the following procedures. Formal approval by the State requires the State to confirm in writing that the Deliverable meets its specifications. Formal approval may include the successful completion of Testing as applicable in **Section 2.253**, to be led by the State with the support and assistance of Contractor. The approval process will be facilitated by ongoing consultation between the parties, inspection 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/Services being reviewed.

(c) Before commencement of its review or testing of a Deliverable/Service, the State may inspect the Deliverable/Service to confirm that all components of the Deliverable/Service have been delivered without material deficiencies. If the State determines that the Deliverable/Service has material deficiencies, the State may refuse delivery of the Deliverable/Service without performing any further inspection or testing of the Deliverable/Service. Otherwise, the review period will be deemed to have started on the day the State receives the Deliverable or the Service begins, and the State and Contractor agree that the Deliverable/Service is ready for use and, where applicable, certification by Contractor according to **Section 2.253**.

(d) The State must approve in writing a Deliverable/Service after confirming that it conforms to and performs according to its specifications without material deficiency. The State may, but is not be required to, conditionally approve in writing a Deliverable/Service 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/Service that remain outstanding at the time of State approval.

(e) If, after three opportunities (the original and two repeat efforts), the Contractor is unable to correct all deficiencies preventing Final Acceptance of a Deliverable/Service, the State may: (i) demand that the Contractor cure the failure and give the Contractor additional time to cure the failure at the sole expense of the Contractor; or (ii) keep this Contract in force and do, either itself or through other parties, whatever the Contractor has failed to do, and recover the difference between the cost to cure the deficiency and this Contract price plus an additional sum equal to 10 percent of the cost to cure the deficiency to cover the State's general expenses provided the State can furnish proof of the 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 the breach. Notwithstanding the foregoing, the State cannot use, as a basis for exercising its termination rights under this Section, deficiencies discovered in a repeat State 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 the process reveals deficiencies in or problems with a Deliverable/Service in a sufficient quantity or of a sufficient severity that renders continuing the process unproductive or unworkable. If that happens, the State may stop using the Service or return the applicable Deliverable to Contractor for correction and re-delivery before resuming the testing or approval process.

**2.255 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 (and if the Statement of Work does not state the State Review Period, it is by default five Business Days for Written Deliverables of 100 pages or less and 10 Business Days for Written Deliverables of more than 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 before 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 before approval of the Deliverable (or at the State's election, after approval of the Deliverable). If the State notifies the Contractor about deficiencies, the Contractor must correct the described deficiencies and within 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 must be made at no additional charge. Upon receipt of a corrected Deliverable from Contractor, the State must 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.

**2.256 Process for Approval of Services**
The State Review Period for approval of Services is governed by the applicable Statement of Work (and if the Statement of Work does not state the State Review Period, it is by default 30 Business Days for Services). The State agrees to notify the Contractor in writing by the end of the State Review Period either stating that the Service is approved in the form delivered by the Contractor or describing any deficiencies that must be corrected before approval of the Services (or at the State's election, after approval of the Service). If the State delivers to the Contractor a notice of deficiencies, the Contractor must correct the described deficiencies and within 30 Business Days resubmit the Service in a form that shows all revisions made to the original version delivered to the State. The Contractor's correction efforts must be made at no additional charge. Upon implementation of a corrected Service from Contractor, the State must have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Service for conformity and that the identified deficiencies have been corrected.

**2.257 Process for Approval of Physical Deliverables**
The State Review Period for approval of Physical Deliverables is governed by the applicable Statement of Work (and if the Statement of Work does not state the State Review Period, it is by default 30 continuous Business Days for a Physical Deliverable). The State agrees to notify the Contractor in writing by the end of the State Review Period either stating that the Deliverable is approved in the form delivered by the Contractor or describing any deficiencies that must be corrected before approval of the Deliverable (or at the State's election, after approval of the Deliverable). If the State delivers to the Contractor a notice of deficiencies, the Contractor must correct the described deficiencies and within 30 Business Days resubmit the Deliverable in a form that shows all revisions made to the original version delivered to the State. The Contractor's correction efforts must be made at no additional charge. Upon receipt of a corrected Deliverable from the Contractor, the State must 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.

**2.258 Final Acceptance**
Unless otherwise stated in the Article 1, Statement of Work or Purchase Order, "Final Acceptance" of each Deliverable must occur when each Deliverable/Service has been approved by the State following the State Review Periods identified in **Sections 2.251-2.257**. Payment will be made for Deliverables installed and accepted. Upon acceptance of a Service, the State will pay for all Services provided during the State Review Period that conformed to the acceptance criteria.

***2.260 Ownership***

**2.261 Ownership of Work Product by State**
The State owns all Deliverables as they are works made for hire by the Contractor for the State. The State owns all United States and international copyrights, trademarks, patents, or other proprietary rights in the Deliverables.

**2.262 Vesting of Rights**
With the sole exception of any preexisting licensed works identified in the SOW, the Contractor assigns, and upon creation of each Deliverable automatically assigns, to the State, ownership of all United States and international copyrights, trademarks, patents, or other proprietary rights in each and every Deliverable, whether or not registered by the Contractor, insofar as any the Deliverable, by operation of law, may not be considered work made for hire by the Contractor for the State. From time to time upon the State's request, the Contractor must confirm the assignment by execution and delivery of the assignments, confirmations of assignment, or other written instruments as the State may request. The State may obtain and hold in its own name all copyright, trademark, and patent registrations and other evidence of rights that may be available for Deliverables.

**2.263 Rights in Data**
(a) The State is the owner of all data made available by the State to the Contractor or its agents, Subcontractors or representatives under this Contract. The Contractor must 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 the Contractor. No employees of the Contractor, other than those on a strictly need-to-know basis, have access to the State's data. Contractor must not possess or assert any lien or other right against the State's data. Without limiting the generality of this Section, the Contractor must only use personally identifiable information as strictly necessary to provide the Services and must disclose the information only to its employees who have a strict need-to-know the information. The Contractor must comply at all times with all laws and regulations applicable to the personally identifiable information.

(b) The State is the owner of all State-specific data under this Contract. The State may use the data provided by the Contractor for any purpose. The State must not possess or assert any lien or other right against the Contractor's data. Without limiting the generality of this Section, the State may use personally identifiable information only as strictly necessary to utilize the Services and must disclose the information only to its employees who have a strict need to know the information, except as provided by law. The State must comply at all times with all laws and regulations applicable to the personally identifiable information. Other material developed and provided to the State remains the State's sole and exclusive property.

**2.264 Ownership of Materials**
The State and the Contractor will continue to own their respective proprietary technologies developed before entering into this Contract. Any hardware bought through the Contractor by the State, and paid for by the State, will be owned by the State. Any software licensed through the Contractor and sold to the State, will be licensed directly to the State.

### ***2.270 State Standards***

**2.271 Existing Technology Standards**
The Contractor must adhere to all existing standards as described within the comprehensive listing of the State's existing technology standards at http://www.michigan.gov/dit.

**2.272 Acceptable Use Policy**
To the extent that Contractor has access to the State computer system, Contractor must comply with the State's Acceptable Use Policy, see http://www.michigan.gov/ditservice. All Contractor employees must be required, in writing, to agree to the State's Acceptable Use Policy before accessing the State system. The State reserves the right to terminate Contractor's access to the State system if a violation occurs.

**2.273 Systems Changes**
Contractor is not responsible for and not authorized to make changes to any State systems without written authorization from the Project Manager. Any changes Contractor makes to State systems with the State's approval must be done according to applicable State procedures, including security, access, and configuration management procedures.

### ***2.280 Extended Purchasing***

**2.281 MiDEAL**
1984 PA 431 permits DMB to provide purchasing services to any city, village, county, township, school district, intermediate school district, non-profit hospital, institution of higher education, community, or junior college. A current listing of approved program members is available at: www.michigan.gov/buymichiganfirst. Unless otherwise stated, the Contractor must ensure that the non-state agency is an authorized purchaser before extending this Contract pricing.

The Contractor must supply these Contract Services and equipment to these local governmental agencies at the established State of Michigan Contract prices and terms to the extent applicable and where available. The Contractor must send its invoices to, and pay 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 this Contract, the quantities of Services and/or equipment purchased must be included in determining the appropriate rate wherever tiered pricing based on quantity is provided.

**2.282 State Employee Purchases – Deleted – NA**

### ***2.290 Environmental Provision***

**2.291 Environmental Provision**
Energy Efficiency Purchasing Policy – The State seeks wherever possible to purchase energy efficient products. This includes giving preference to U.S. Environmental Protection Agency (EPA) certified Energy Star products for any category of products for which EPA has established Energy Star certification. For other purchases, the State may include energy efficiency as one of the priority factors to consider when choosing among comparable products.

Environmental Purchasing Policy – The State of Michigan is committed to encouraging the use of products and services that impact the environment less than competing products. The State is accomplishing this by including environmental considerations in purchasing decisions, while remaining fiscally responsible, to promote practices that improve worker health, conserve natural resources, and prevent pollution. Environmental components that are to be considered include: recycled content and recyclability; energy efficiency; and the presence of undesirable materials in the products, especially those toxic chemicals which are persistent and bioaccumulative. The Contractor should be able to supply products containing recycled and environmentally preferable materials that meet performance requirements and is encouraged to offer such products throughout the duration of this Contract. Information on any relevant third party certification (such as Green Seal, Energy Star, etc.) should also be provided.

Hazardous Materials – Deleted – NA

Refrigeration and Air Conditioning:
The Contractor must comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to this Contract.

Environmental Performance:
Waste Reduction Program: Contractor must establish a program to promote cost-effective waste reduction in all operations and facilities covered by this Contract. The Contractor's programs must comply with applicable Federal, State, and local requirements, specifically including Section 6002 of the Resource Conservation and Recovery Act (42 U.S.C. 6962, et seq.).

## ***2.300 Other Provisions***

**2.311 Forced Labor, Convict Labor, Forced or Indentured Child Labor, or Indentured Servitude Made Materials**
Equipment, materials, or supplies, that will be furnished to the State under this Contract must not be produced in whole or in part by forced labor, convict labor, forced or indentured child labor, or indentured servitude.

“Forced or indentured child labor” means all work or service: exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or performed by any person under the age of 18 under a contract the enforcement of which can be accomplished by process or penalties.

## Appendix A, Price Proposal

The price proposal will be submitted in accordance with the second tier, competitive selection process.