

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

December 22, 2009

NOTICE  
OF  
CONTRACT NO. 071B0200093  
between  
THE STATE OF MICHIGAN  
and

NAME & ADDRESS OF VENDOR <b>DLT Solutions, Inc.</b> <b>13861 Sunrise Valley Drive</b> <b>Herndon, VA 20117</b>	TELEPHONE: <b>(929) 754-8782</b>
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-0239 <b>Email: Jacque Kuch</b>
Contract Compliance Inspector: Mike Breen <b>Enterprise Mail Archiving - DIT</b>	
CONTRACT PERIOD: From: <b>December 15, 2009</b> To: <b>December 14, 2012</b>	
TERMS <b>NA</b>	SHIPMENT <b>NA</b>
F.O.B. <b>NA</b>	SHIPPED FROM <b>NA</b>
MINIMUM DELIVERY REQUIREMENTS	
MISCELLANEOUS INFORMATION:	

**Estimated Contract Value: \$1,773,119.00**

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 DEPARTMENT OF MANAGEMENT AND BUDGET  
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MINIMUM DELIVERY REQUIREMENTS	
MISCELLANEOUS INFORMATION: <b>The terms and conditions of this Contract are those of ITB #07119200196, this Contract Agreement and the vendor's quote. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.</b>	
<b>Estimated Contract Value: \$1,773,119.00</b>	

**All terms and conditions of the invitation to bid are made a part hereof.**

<b>FOR THE VENDOR:</b>  <div style="text-align: center; border-bottom: 1px solid black;"> <b>DLT Solutions Inc.</b>        Firm Name     </div> <div style="text-align: center; border-bottom: 1px solid black;">       Authorized Agent Signature     </div> <div style="text-align: center; border-bottom: 1px solid black;">       Authorized Agent (Print or Type)     </div> <div style="text-align: center; border-bottom: 1px solid black;">       Date     </div>	<b>FOR THE STATE:</b>  <div style="text-align: center; border-bottom: 1px solid black;">       Signature  <b>Greg Faremouth, Director</b> </div> <div style="text-align: center; border-bottom: 1px solid black;">       Name/Title  <b>IT</b> </div> <div style="text-align: center; border-bottom: 1px solid black;">       Division     </div> <div style="text-align: center; border-bottom: 1px solid black;">       Date     </div>
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**STATE OF MICHIGAN**  
**Department of Management and Budget**  
**Purchasing Operations**

Contract #. 071B0200093  
**Email Archive Solution**

Buyer Name: Jacque Kuch  
Telephone Number: 517-241-0239  
E-Mail Address: [kuchj@michigan.gov](mailto:kuchj@michigan.gov)



Table of Contents

**DEFINITIONS 8**

**Article 1 – Statement of Work (SOW) 10**

- 1.000 Project Identification 10**
  - 1.001 Project 10
- 1.100 Scope of Work and Deliverables 10**
  - 1.101 In Scope 10
  - 1.102 Out Of Scope 11
  - 1.103 Environment 11
- 1.200 Roles and Responsibilities 18**
  - 1.201 Contractor Staff, Roles, and Responsibilities 18
  - 1.202 State Staff, Roles, and Responsibilities 20
- 1.300 Project Plan 21**
  - 1.301 Project Plan Management 21
  - 1.302 Reports 22
- 1.400 Project Management 22**
  - 1.401 Issue Management 22
  - 1.402 Risk Management 23
  - 1.403 Change Management 23
- 1.500 Acceptance 24**
  - 1.501 Criteria 24
  - 1.502 Final Acceptance 25
- 1.600 Compensation and Payment 25**
  - 1.601 Compensation and Payment 25
  - 1.602 Holdback -Reserved 26

**Article 2, Terms and Conditions 27**

- 2.000 Contract Structure and Term 27**
  - 2.001 Contract Term 27
  - 2.002 Options to Renew 27
  - 2.003 Legal Effect 27
  - 2.004 Attachments & Exhibits 27
  - 2.005 Ordering 27
  - 2.006 Order of Precedence 27
  - 2.007 Headings 28
  - 2.008 Form, Function & Utility 28
  - 2.009 Reformation and Severability 28
- 2.010 Consents and Approvals 28**
  - 2.011 No Waiver of Default 28
  - 2.012 Survival 28
- 2.020 Contract Administration 28**
  - 2.021 Issuing Office 28
  - 2.022 Contract Compliance Inspector 28
  - 2.023 Project Manager 29
  - 2.024 Change Requests 29
  - 2.025 Notices 30
  - 2.026 Binding Commitments 30
  - 2.027 Relationship of the Parties 31
  - 2.028 Covenant of Good Faith 31
  - 2.029 Assignments 31
- 2.030 General Provisions 31**
  - 2.031 Media Releases 31
  - 2.032 Contract Distribution 31
  - 2.033 Permits 31
  - 2.034 Website Incorporation 32
  - 2.035 Future Bidding Preclusion 32



2.036	Freedom of Information	32
2.037	Disaster Recovery	32
<b>2.040</b>	<b>Financial Provisions</b>	<b>32</b>
2.041	Fixed Prices for Services/Deliverables	32
2.042	Adjustments for Reductions in Scope of Services/Deliverables	32
2.043	Services/Deliverables Covered	32
2.044	Invoicing and Payment – In General	32
2.045	Pro-ration	33
2.046	Antitrust Assignment	33
2.047	Final Payment	33
2.048	Electronic Payment Requirement	33
<b>2.050</b>	<b>Taxes</b>	<b>33</b>
2.051	Employment Taxes	33
2.052	Sales and Use Taxes	33
<b>2.060</b>	<b>Contract Management</b>	<b>34</b>
2.061	Contractor Personnel Qualifications	34
2.062	Contractor Key Personnel	34
2.063	Re-assignment of Personnel at the State’s Request	34
2.064	Contractor Personnel Location	35
2.065	Contractor Identification	35
2.066	Cooperation with Third Parties	35
2.067	Contract Management Responsibilities	35
2.068	Contractor Return of State Equipment/Resources	35
<b>2.070</b>	<b>Subcontracting by Contractor</b>	<b>35</b>
2.071	Contractor full Responsibility	35
2.072	State Consent to delegation	36
2.073	Subcontractor bound to Contract	36
2.074	Flow Down	36
2.075	Competitive Selection	36
<b>2.080</b>	<b>State Responsibilities</b>	<b>36</b>
2.081	Equipment	36
2.082	Facilities	36
<b>2.090</b>	<b>Security</b>	<b>37</b>
2.091	Background Checks	37
2.092	Security Breach Notification	37
2.093	PCI DATA Security Requirements	37
<b>2.100</b>	<b>Confidentiality</b>	<b>38</b>
2.101	Confidentiality	38
2.102	Protection and Destruction of Confidential Information	38
2.103	Exclusions	38
2.104	No Implied Rights	38
2.105	Respective Obligations	39
<b>2.110</b>	<b>Records and Inspections</b>	<b>39</b>
2.111	Inspection of Work Performed	39
2.112	Examination of Records	39
2.113	Retention of Records	39
2.114	Audit Resolution	39
2.115	Errors	39
<b>2.120</b>	<b>Warranties</b>	<b>40</b>
2.121	Warranties and Representations	40
2.122	Warranty of Merchantability	41
2.123	Warranty of Fitness for a Particular Purpose - Reserved	41
2.124	Warranty of Title - Reserved	41
2.125	Equipment Warranty - Reserved	41
2.126	Equipment to be New - Reserved	41
2.127	Prohibited Products - Reserved	41
2.128	Consequences for Breach	41
<b>2.130</b>	<b>Insurance</b>	<b>41</b>
2.131	Liability Insurance	41
2.132	Subcontractor Insurance Coverage	43



2.133	Certificates of Insurance and Other Requirements	43
<b>2.140</b>	<b>Indemnification</b>	<b>43</b>
2.141	General Indemnification	43
2.142	Code Indemnification	43
2.143	Employee Indemnification	44
2.144	Patent/Copyright Infringement Indemnification-Reserved	44
2.145	Continuation of Indemnification Obligations	44
2.146	Indemnification Procedures	44
<b>2.150</b>	<b>Termination/Cancellation</b>	<b>45</b>
2.151	Notice and Right to Cure	45
2.152	Termination for Cause	45
2.153	Termination for Convenience	45
2.154	Termination for Non-Appropriation	45
2.155	Termination for Criminal Conviction	46
2.156	Termination for Approvals Rescinded	46
2.157	Rights and Obligations upon Termination	46
2.158	Reservation of Rights	46
<b>2.160</b>	<b>Termination by Contractor</b>	<b>47</b>
2.161	Termination by Contractor	47
<b>2.170</b>	<b>Transition Responsibilities</b>	<b>47</b>
2.171	Contractor Transition Responsibilities	47
2.172	Contractor Personnel Transition	47
2.173	Contractor Information Transition	47
2.174	Contractor Software Transition	47
2.175	Transition Payments	47
2.176	State Transition Responsibilities	48
<b>2.180</b>	<b>Stop Work</b>	<b>48</b>
2.181	Stop Work Orders	48
2.182	Cancellation or Expiration of Stop Work Order	48
2.183	Allowance of Contractor Costs	48
<b>2.190</b>	<b>Dispute Resolution</b>	<b>48</b>
2.191	In General	48
2.192	Informal Dispute Resolution	49
2.193	Injunctive Relief	49
2.194	Continued Performance	49
<b>2.200</b>	<b>Federal and State Contract Requirements</b>	<b>49</b>
2.201	Nondiscrimination	49
2.202	Unfair Labor Practices	50
2.203	Workplace Safety and Discriminatory Harassment	50
2.204	Prevailing Wage	50
<b>2.210</b>	<b>Governing Law</b>	<b>50</b>
2.211	Governing Law	50
2.212	Compliance with Laws	50
2.213	Jurisdiction	50
<b>2.220</b>	<b>Limitation of Liability</b>	<b>51</b>
2.221	Limitation of Liability	51
<b>2.230</b>	<b>Disclosure Responsibilities</b>	<b>51</b>
2.231	Disclosure of Litigation	51
2.232	Call Center Disclosure	52
2.233	Bankruptcy	52
<b>2.240</b>	<b>Performance</b>	<b>52</b>
2.241	Time of Performance	52
2.242	Service Level Agreement (SLA)	52
2.243	Liquidated Damages – Reserved	53
2.244	Excusable Failure	53
<b>2.250</b>	<b>Approval of Deliverables</b>	<b>53</b>
2.251	Delivery of Deliverables - Reserved	53
2.252	Contractor System Testing	54
2.253	Approval of Deliverables, In General - Reserved	54



2.254	Process for Approval of Written Deliverables	54
2.255	Process for Approval of Custom Software Deliverables	54
2.256	Final Acceptance	55
<b>2.260</b>	<b>Ownership</b>	<b>55</b>
2.261	Ownership of Work Product by State - Reserved	55
2.262	Vesting of Rights - Reserved	55
2.263	Rights in Data	55
2.264	Ownership of Materials	56
<b>2.270</b>	<b>State Standards</b>	<b>56</b>
2.271	Existing Technology Standards	56
2.272	Acceptable Use Policy	56
2.273	Systems Changes	56
<b>2.280</b>	<b>Extended Purchasing</b>	<b>56</b>
2.281	MiDEAL (Michigan Delivery Extended Agreements Locally	56
2.282	State Employee Purchases - Reserved	56
<b>2.290</b>	<b>Environmental Provision</b>	<b>56</b>
2.291	Environmental Provision	56
<b>2.300</b>	<b>Deliverables</b>	<b>58</b>
2.301	Software	58
2.302	Hardware - Reserved	58
2.303	Equipment to be New - Reserved	58
2.304	Equipment to be New and Prohibited Products - Reserved	58
<b>2.310</b>	<b>Software Warranties</b>	<b>58</b>
2.311	Performance Warranty - Reserved	58
2.312	No Surreptitious Code Warranty	58
2.313	Calendar Warranty	59
2.314	Third-party Software Warranty	59
2.315	Physical Media Warranty	59
<b>2.320</b>	<b>Software Licensing</b>	<b>59</b>
2.321	Cross-License, Deliverables Only, License to Contractor-Reserved	59
2.322	Cross-License, Deliverables and Derivative Work, License to Contractor	59
2.323	License Back to the State	59
2.324	License Retained by Contractor	60
2.325	Pre-existing Materials for Custom Software Deliverables	60
<b>2.330</b>	<b>Source Code Escrow</b>	<b>60</b>
2.331	Definition	60
2.332	Delivery of Source Code into Escrow	60
2.333	Delivery of New Source Code into Escrow	61
2.334	Verification	61
2.335	Escrow Fees	61
2.336	Release Events	61
2.337	Release Event Procedures	61
2.338	License	61
2.339	Derivative Works	61
<b>2.400</b>	<b>Other Provisions</b>	<b>61</b>
2.411	Forced Labor, Convict Labor, Forced or Indentured Child Labor, or Indentured Servitude Made Materials	61
<b>Appendix A</b>		<b>63</b>
<b>Appendix B</b>		<b>68</b>
<b>Appendix C</b>		<b>79</b>
<b>Appendix D</b>		<b>86</b>
<b>Attachment A</b>		<b>95</b>
<b>Attachment B</b>		<b>96</b>



**DEFINITIONS**

Days	Means calendar days unless otherwise specified.
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/Deliverables within the scope of the Contract, but not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration.
Audit Period	See Section 2.110
Business Day	Whether capitalized or not, shall mean any day other than a Saturday, Sunday or State-recognized legal holiday (as identified in the Collective Bargaining Agreement for State employees) from 8:00am EST through 5:00pm EST unless otherwise stated.
Blanket Purchase Order	An alternate term for Contract as used in the States computer system.
Business Critical	Any function identified in any Statement of Work as Business Critical.
Chronic Failure	Defined in any applicable Service Level Agreements.
Deliverable	Physical goods and/or commodities as required or identified by a Statement of Work
DMB	Michigan Department of Management and Budget
Environmentally preferable products	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 that contain recycled content, minimize waste, conserve energy or water, and reduce the amount of toxics either disposed of or consumed.
Excusable Failure	See Section 2.244.
Hazardous material	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	Any interruption in Services.
ITB	A generic term used to describe an Invitation to Bid. The ITB serves as the document for transmitting the RFP to potential bidders
Key Personnel	Any Personnel designated in Article 1 as Key Personnel.
New Work	Any Services/Deliverables outside the scope of the Contract and not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration.
Ozone-depleting substance	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, hydro chlorofluorocarbons
Post-Consumer Waste	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	Industrial by-products that would otherwise go to disposal and wastes generated after completion of a manufacturing process, but do not include internally generated scrap commonly returned to industrial or manufacturing processes.
Recycling	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.
Deleted – Not Applicable	Section is not applicable or included in this RFP. This is used as a placeholder to maintain consistent numbering.
Reuse	Using a product or component of municipal solid waste in its original form more than once.
RFP	Request for Proposal designed to solicit proposals for services



Services	Any function performed for the benefit of the State.
Source reduction	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	Any physical location where the State performs work. State Location may include state-owned, leased, or rented space.
Subcontractor	A company Contractor delegates performance of a portion of the Services to, but does not include independent contractors engaged by Contractor solely in a staff augmentation role.
Unauthorized Removal	Contractor's removal of Key Personnel without the prior written consent of the State.
Waste prevention	Source reduction and reuse, but not recycling.
Waste reduction and Pollution prevention	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	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 this Contract.



## **Article 1 – Statement of Work (SOW)**

### **1.000 Project Identification**

#### **1.001 Project**

The State of Michigan (SOM), through the Michigan Department of Information Technology (MDIT), with assistance of the Michigan Department of Management & Budget (MDMB), have issued this Contract to provide an Email Archiving Solution for use by SOM.

The Department of Information Technology has consolidated Email services using Novell GroupWise 7.0 and Microsoft Exchange 2003 by providing a mail system that stores and forwards mail between State agencies and external trading partners (business partners).

The Contractor will provide services and software supported by State staff to provide an email archiving solution to SOM.

The current Email systems require a single archiving solution installed and fully operational within three (3) months of Contract start date.

#### **1.002 Background**

The goal of MDIT is to provide cost savings to SOM Executive agencies and departments by consolidating services and providing a consistent technological environment that is efficient and state of the art.

It is the direction SOM, in order to consolidate services, to migrate to a single email system. This single email platform will be Microsoft Exchange. A method of archiving GroupWise emails and archives pre-migration is desired, since the major time constraint in migrating users to Exchange is that of migrating the end user's archives. It is required that the GroupWise archives be migrated to an archive system before migration, so that the mail data that is migrated to Exchange is only recent live mail.

As part of the legacy Exchange environment, many users have archived their email data in PST files. The strategic direction of SOM is to utilize Microsoft clustered file and print servers for data storage. Many of the current Exchange users store their Exchange PST archives on these, which Microsoft does not support. Also end users are storing their PST archives on their local hard drives, which are not being backed up. A method is required to migrate and transfer these PST files to an enterprise archiving solution.

### **1.100 Scope of Work and Deliverables**

#### **1.101 In Scope**

This Contract provides for a single archiving solution to the existing Novell GroupWise and Microsoft Exchange email systems in:

- 1) The production environment
- 2) A test/development environment

The solution will be hosted in SOM's hosting centers. Services included within this contract are:

1. Contractor shall establish with SOM staff, a single archiving solution to the existing Novell GroupWise and Microsoft Exchange email systems. This new solution will be considered business critical to the SOM and must be available as a critical service, with scheduled downtime for system maintenance.
2. Contractor shall establish with SOM staff, a single archiving solution which will serve in the capacity of the testing and development environment. The Test/Development environment will be physically separated in another hosting center from the production environment.



3. Contractor shall provide software support for these systems during the term of this contract. This includes both patch and version levels. This is a business critical service and must be available for SOM clients 7 x 24 x 365 support with limited downtime (software support), of less than 6 hours per month. In the event of a software failure the Contractor shall be on-site within one hour to restore services. In the event that services cannot be restored within 2 hours then the Contractor shall work with SOM staff to bring up the production service at the SOM's Remote Data Center.
4. Contractor shall continue to keep this software solution at supported operating system levels at no additional cost to SOM. The solution must stay current with all security patches, and all system maintenance will be planned and coordinated with SOM staff.
5. The solution must meet the performance metrics outlined within this Contract. Performance metrics must be consolidated into a single report, and the Contractor shall be asked for a recommended SLA process. The solution should be sized to accommodate an annual growth in transaction volume and translation volume not to exceed 150% each year. Current volumes, as of the start date of this Contract, are described in section 1.103 Environment.
6. The Contractor shall be responsible for the testing and verification of the archiving product platforms prior to production. This will include a high level plan for testing and verification of the solution, and should include a description of the essential elements of the testing process.
7. Contractor shall provide for a formal Knowledge Transfer Plan (KTP) and training plan. These should include metrics to demonstrate state staff ability to manage the system during the transition.
8. Contractor shall provide the services of at least one on-site full time technical specialist to aid in the installation and successful implementation of the archiving solution. This specialist shall be skilled in support of the software solution, and available to mentor and train state staff as needed.
9. Day to day support and service of this solution will be performed by SOM employees. Contractor shall provide a transition plan, sufficient training and other support materials, so that senior technical staff will be able to troubleshoot and maintain the solution at normal operating parameters.
10. Contractor shall provide SOM with two hardcopies of all system documentation as well as an electronic copy.
11. Contractor shall be responsible for meeting with SOM on a regular basis (at least once each month) to advise SOM on matters or issue of relevance to the archiving solution.

A more detailed description of the software, services (work) and deliverables sought for this project is provided in Article 1, Section 1.104, Work and Deliverables.

**1.102 Out Of Scope**

Ongoing operations of the archiving solution platform and software are the responsibility of SOM.

Acquisition of any potential proposed Novell, Microsoft or database licenses are out of scope.

**1.103 Environment**

The links below provide information on the SOM's Enterprise IT policies, standards and procedures which includes security policy and procedures, IT strategic plan, eMichigan web development and the SOM Unified Information Technology Environment (SUITE).

SOM has methods, policies, standards and procedures that have been developed over the years. All services and products provided as a result of this Contract must comply with all applicable State IT policies and standards. The Contractor shall request any exception to State IT policies and standards in accordance with MDIT processes. The SOM may deny the exception request or seek a policy or standards exception.

**Enterprise IT Policies, Standards and Procedures:**

<http://www.michigan.gov/dit/0,1607,7-139-34305---,00.html>

All software and hardware items provided by this Contract must run on and be compatible with the MDIT Standard Information Technology Environment. Additionally, the SOM must be able to maintain software and other items produced as the result of the Contract. Therefore, non-standard development tools may not be used unless approved by MDIT. The Contractor shall request, in writing, approval to use non-standard software development tools, providing justification for the requested change and all costs associated with any change. The SOM's Project Manager and MDIT must approve any tools, in writing, before use on any information technology project.

It is recognized that technology changes rapidly. The Contractor may request, in writing, a change in the standard environment, providing justification for the requested change and all costs associated with any change. The SOM's Project Manager must approve any changes, in writing, and MDIT, before work may proceed based on the changed environment.

**Enterprise IT Security Policy and Procedures:**

<http://www.michigan.gov/dit/0,1607,7-139-34305-108216--,00.html>

**The SOM's security environment includes:**

- MDIT Single Login.
- MDIT provided SQL security database.
- Secured Socket Layers.
- SecureID (State Security Standard for external network access and high risk Web systems)

MDIT requires that its single - login security environment be used for all new client-server software development. Where software is being converted from an existing package, or a client-server application is being purchased, the security mechanism must be approved in writing by the SOM's Project Manager and MDIT's Office of Enterprise Security.

Any additional Agency specific security requirements above and beyond the enterprise requirements and standard terms and conditions stated in Article 2 must be provided as part of the Agency Specific Technical Environment.

**IT Strategic Plan:**

<http://www.michigan.gov/dit/0,1607,7-139-30637-135173--,00.html>

**IT eMichigan Web Development Standard Tools:**

[http://www.michigan.gov/documents/Look\\_and\\_Feel\\_Standards\\_2006\\_v3\\_166408\\_7.pdf](http://www.michigan.gov/documents/Look_and_Feel_Standards_2006_v3_166408_7.pdf)

**The SOM Unified Information Technology Environment (SUITE):**

Includes standards for project management, systems engineering, and associated forms and templates – must be followed: <http://www.michigan.gov/suite>

**Project Specific Technical Environment**

SOM's email system is composed of approximately 60,000 users. At the start of this Contract, there are currently 45,000 on GroupWise and 15,000 on Exchange in existence. The SOM GroupWise system is clustered, uses eDirectory as its authentication directory, and contains 33 domains, 6 being externals. The current GroupWise version is 7.0. The Microsoft Exchange environment consists of 6 servers, and is in a non-clustered environment. The current Exchange version is 2003, although there are plans to upgrade this to Exchange 2007 by the end of this fiscal year (2009). Exchange utilizes SOM's M1 enterprise Active Directory for authentication, and some agencies are authenticated to Exchange through a forest to forest trust. Message transfers between GroupWise and Exchange is implemented using the Microsoft GroupWise connector. Addresses are synchronized in each address book by the connector, as well as free/busy and schedule sharing. Internet mail is routed to the consolidated email system using Trend Micro as an Anti Virus and Anti Spam gateway. Once the inbound mail passes through the Trend servers, the mail is routed to GroupWise or



Exchange utilizing Microsoft SMTP servers by LDAP routing. The LDAP routing directories are ADAM LDAP directories that are created using Microsoft Identity Integration server and a connector to each email systems address book. The Microsoft Exchange system uses Windows 2003 as its OS, and the GroupWise clustered servers use Netware. Exchange 2007 will use Windows 2008. The mail servers are housed at two separate data centers, 10 miles apart, each connected by Gigabit fiber. Data storage for both systems is handled by an external EMC Clarion SAN storage system. Backups are performed by VERITAS. The GroupWise clients are at version 7.0, while the Exchange clients are Outlook 2000, 2003, or 2007. Web access is available from both systems. The State of Michigan is also utilizing a Blackberry Enterprise Server for both environments. Secure inbound / outbound mail is provided by a ZIX email appliance from ZIX Corp. Approximately 200 users utilize this device.

Statistics (approximate):

- 3.0 TB in 55,000 live user mailboxes
- Average 55 MB mailbox size
- Average Inbound emails per day per user: 14
- Average Outbound email per day per user: 7
- Average message size: 55kb
- The total size of all archives is unknown, from migration experience it seems to be an average of about 1GB per user

Protocols and Interfaces include

- SMTP
- TLS
- Outlook (RPC)
- GroupWise Client
- LDAP
- SLDAP
- Active Directory
- eDirectory
- Netware
- HTTP
- HTTP

**1.104 Work and Deliverable**

**I. Services (work) To Be Provided and Deliverables**

The email archiving system will be installed and in operation by May 31, 2010.

**A. General Requirements**

**Deliverable(s)**

Contractor shall provide an architecture design, utilize technology standards, and present an applicable programming environment (when necessary) for email archiving.

**i. Service all SOM email systems**

The State of Michigan utilizes both GroupWise and Exchange for its email system, as well as Trend Micro for inbound / outbound SMTP. This product must be architected to support each system.

**ii. Perform real time archiving**

Because of E-Discovery requirements, mail sent or received needs to be captured in a way that prevents end user deletion or manipulation of email before is it archived.

**iii. End user interface**

End users must be able to view their personal email archives.



**iv. Handle E-Discovery activities**

The software must be able to easily manage email data to facilitate E-Discovery activities.

**Acceptance Criteria**

Successful completion of the facilitation sessions, validation, and verifications as stated above. In addition, the Contractor shall provide an architectural plan, a technical design plan and a project implementation plan that outlines, describes and enables the delivery of an email archiving environment that addresses the functional and technical requirements listed in Appendix A and B.

High-level acceptance criteria for Document Deliverables are listed in Section 1.501.

**B. Software**

The Contractor shall provide a COTS software solution that meets all technical and functional requirements as listed in Appendix A and B. The Contractor shall provide software and installation services onto state provided hardware unless otherwise agreed upon and accepted in this contract.

**Deliverable(s)**

The following software packages will be provided by the contractor:

1. <b>Exchange Mgmt Suite</b>	
2. Quest Policy Authority	8.1
3. MessageStats with Report Packs	6.6
4. Recovery Mgr for Exchange	4.7
5. Spotlight on Messaging	7.2
6. Archive Manager	1.0
7. Change Auditor for Exchange	4.8
8. <b>Active Directory Mgmt Suite</b>	
9. ActiveRoles:Server	6.0.1
10. Recovery Mgr for AD	7.9
11. Spotlight on AD	6.8
12. Directory Analyzer	4.9
13. Directory Troubleshooter	4.9.40
14. InTrust with Plug-ins	10.1
15. Plug-in for Active Directory	3.2.4
16. Plug-in for Exchange	2.1
17. Plug-in for File	2.1.1
18. Site Administrator for SharePoint	3.2
19. Recovery Mgr for SharePoint	2.7.8
20. Quest Webparts for SharePoint	5.0
21. Quest Reporter	6.3
22. NDS Migrator	4.3
23. GroupWise Migrator	3.5.1.54

Software licenses provide will be 65,000 per tool.

**Acceptance Criteria**

Delivery of software through electronic means, and any necessary licensing keys.

**C. Implementation**

A complete implementation of the Contractor’s solution for email archiving is required. Once the solution is readied, the Contractor shall develop and run technical and user acceptance testing, prepare and provide operational and technical documentation, and conduct SOM training for use of the system. An iterative approach is required in order to step through this element of scope, with each cycle adding significant functionality to the system.



**Deliverable(s)**

Contractor shall provide appropriate system interfaces/integration to the following applications:

- Novell GroupWise
- Microsoft Exchange

This includes the ability to convert and migrate native archives from each platform to the archiving solution. This solution must be tested in a SOM provided test environment before implementation into a production environment.

**Acceptance Criteria**

Successful implementation of Contractor's solution in a limited production environment that meets all mandatory functional and technical requirements as listed in Appendix A and B. This limited production environment must be representative of the general SOM email environment. This will consist of at least 1000 GroupWise users and 1000 Exchange users.

**D. Full Support and Transition to State of Michigan (Implementation of the Transition Plan)**

SOM requires technical staff training and transitioning that will vertically cut across all aspects of this project.

**Deliverable(s)**

Training, Knowledge Transfer, and Transitioning of:

- i. Conversion of native archives to solution
- ii. Managing the archive solution
- iii. Maintaining the archive solution
- iv. Performance parameters
- v. Reporting of and extracting e-discovery data from solution
- vi. Other areas as necessary to enable SOM staff to fully support, manage and maintain the solution with minimal Contractor support

All training manuals, training plans and other documentation provided become the property of the SOM.

**Acceptance Criteria**

Completion of training to select SOM staff as deemed appropriate by SOM Project Manager. The training must be given to at least 10 SOM staff, and must include recommended support, maintenance and troubleshooting techniques applicable to the Contractor's email archiving solution.

**D. Documentation**

A full set of documentation of the Contractor's solution, functional, technical, and architecturally is required.

**Deliverable(s)**

The following documentation needs to be provided, as required by the Contractor's solution

- End user manuals
- Technical manuals
  - 1. A minimum of two (2) copies of the following documentation in an electronic format, online and in hard copy will be provided:
    - a. User and Technical Manuals - On-line and Hard Copy
    - b. Operations Manual
    - c. All updates of documentation during the term of the Contract, software license and maintenance agreement
  - 2. The following documentation is provided for all modules and program development:
    - a. System-wide documentation and specifications
    - b. Baseline End-User training manuals to be used as a basis for "User Manuals" and online help
    - c. Installation procedure
    - d. Module configuration documents sufficient for configuration maintenance purposes



- e. Testing scripts (if applicable)
  - f. Specification documentation
  - g. Production migration
3. The documentation of components, features, and use of the hardware/software shall be detailed such that resolution of most problems can be determined from the documentation, and most questions can be answered.
  4. All system, operational, user, change, and issue documentation must be available in electronic format, updated regularly, with unique numerical identifiers for each section and be consistent with the most current version of the application(s).
  5. All system, operations, user, change and issue documentation is to be organized in a format, which is approved by SOM.
  6. The Contractor shall develop and submit for SOM approval complete, accurate, and timely system, operations, and user documentation.
  7. The Contractor shall notify SOM of any discrepancies or errors outlined in the system, operations, and user documentation.

### **Acceptance Criteria**

Delivery of documents as listed above.

## **II. Requirements**

The following are not in any specific priority order since all components are considered equally important in implementing an email archiving solution for SOM.

### **A. Technical/General System Requirements**

#### **1. System Architecture**

- a. The application must integrate with Exchange and GroupWise
- b. The application cannot place any limit on the number of emails or archive size
- c. The application's server and OS must meet SOM's technical architecture
- d. The solution is fully self-contained and capable of being operated by State staff with no dependency on Contractor services for its routine operation.
- e. The application must provide an end user client interface for personal archive access.
- f. The application must provide an interface for archive searches and provide a method of reporting based on these searches.
- g. The application must provide a method for archive searches that allows archive extraction based on current industry standard e-discovery methodologies. (Archived email must be kept in a legally unmodified form)
- h. The system keeps a log of each transaction which alters the database. Logs are date and time stamped to allow the system to reconstruct activity for any period
- i. The application stores attachments as well as complete email bodies

#### **2. Security and Access Control**

- a. The system provides security at database, workstation, and individual operator levels.
- b. The system checks each user's access privileges at login, and automatically disable or enables client functions (in real time) based upon the user's profile
- c. The system provides varying levels of access within the application, such as administrators or view only.
- d. The application provides a method of tamper protection on archived mail

#### **3. Security/Password Controls**

- a. The application authenticates to Active Directory for Exchange integration
- b. The application authenticates to e-Directory for GroupWise integration

#### **4. Security/Activity Logging**

- a. The system logs unauthorized access attempts by date, time, user ID



- b. The system maintains an audit trail of all security maintenance performed by date, time, user ID and location, with easy access to information.
- c. The application provides security reports of users and access levels.

**5. Misc Specifications**

- a. The software uses a relational database management system as defined as a standard within the State of Michigan’s enterprise environment
- b. The software will operate effectively on State hardware as defined as a standard within the State of Michigan’s enterprise environment
- c. The software utilizes an operating system as defined as a standard within the State of Michigan’s enterprise environment

**6. Reporting**

- a. The system includes ad-hoc query and reporting tools.
- b. The online query capability enables non-technical end-users to extract information.

**7. Capacity / Scalability**

- a. The system should be able to support 1.5x the peak number of concurrent users in the current system in order to provide sufficient capacity for growth.

**8. Error Handling**

- a. The system must ensure that all errors are written to an error log.
- b. The system must allow for an administrator to view, filter, sort, and search the error log.
- c. The system must allow for an alert message to be defined that can be executed upon the occurrence of an error.

**9. Backup and Recovery**

- a. The system has the ability to allow for continued use of the system during backup.
- b. The system will interface and utilize SOM backup and recovery standards.

Contractor shall supply a production platform and a Test/Development/DR platform. The system configurations must include enough detail so the SOM can evaluate the resource levels, i.e. processor, disk storage, input/output connectivity and network connectivity. System configurations must be categorized according to configuration size.

**Redundancy and Availability**

The Contractor shall supply at a minimum in two separate locations, a hardware and software design capable of meeting the following requirements for system availability and fault tolerance for a 24 hour/day, 7 day/week operation with at a minimum a 99 percent uptime.

- **Required scheduled downtime: less than 6 hours per month**
  - a) Archiving is extremely sensitive to due to E-Discovery.
  - b) End user archive client is not as sensitive to availability
  - c) Email transactions occur on a 24 hour, seven day basis. Any scheduled downtime cannot interfere with archiving of any mail that may be processed during this time.
- **Required unscheduled downtime: 99 % availability - < 6 hours / month**
  - a) Archiving is extremely sensitive to due to E-Discovery.
  - b) Any downtime cannot interfere with the archiving of any mail that may be processed during this time.

**B. Functional Requirements**

**1. Email Platform**

The following functionality must be supported by the Contractor’s Email Archiving Platform:

State of Michigan (SOM) Messaging Platforms:



- a. GroupWise 7.0, GroupWise 7.0 client
- b. Exchange 2003, 2007, Outlook 2000, 2003, 2007

**2. Scalability**

The overall system performance must be unaffected if the capacity increases at an overall rate of 150% per year.

**3. Exchange Requirements**

- a. Must collect PST files on client workstations
- b. Must collect PST files on personal file shares
- c. May have archive access integrated with client
- d. May have archive access integrated with web client
- e. Must collect all incoming and outgoing emails (forced archiving)
- f. Must prevent deletion of archived mail by user

**4. GroupWise Requirements**

- a. Must collect GroupWise archive files on client workstations
- b. Must collect GroupWise archive files on file shares
- c. May have archive access integrated with client
- d. May have archive access integrated with web client
- e. Must collect all incoming and outgoing emails (forced archiving)
- f. Must prevent deletion of archived mail by user

Contractor shall ensure that the system will provide both real time archiving and personal archive migration capabilities for each platform and provides a user interface for managing and displaying personal views of their own individual archives.

**5. Other Requirements**

- a. Must be able to secure access to archive based on group and user security
- b. Must be able to allow end user to retrieve archived mail
- c. May allow ability for end user to mail and reply/forward of retrieved archive as with normal mail
- d. Must provide ability to limit amount of archive exposed to end user
- e. May allow the ability for end user to customize archive view
- f. Must provide business filters to determine what archives will be stored and how long
- g. Must provide business filters for archives on a per group and user basis
- h. May provide a method of offline access for end user archives
- i. Must be able to provide a browser interface for e-discovery archive access

**1.200 Roles and Responsibilities**

**1.201 Contractor Staff, Roles, and Responsibilities**

**A. Contractor Staff**

Contractor shall provide a list of all subcontractors, including firm name, address, contact person.

The Contractor’s Single Point of Contact (SPOC) for this project is Dennis Kappeler, DLT’s Program Manager. The duties of the SPOC shall include, but not be limited to:

- supporting the management of the Contract,
- facilitating dispute resolution, and
- advising the SOM of performance under the terms and conditions of the Contract.

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



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

All Key Personnel may be subject to the SOM's interview and approval process. Any key staff substitution must have the prior approval of the SOM.

**The Contractor shall provide a technical lead** to interact with the designated personnel from the SOM to insure a smooth transition to the new system. The Project Manager/technical lead will coordinate all of the activities of the Contractor personnel assigned to the project and create all reports required by State. The Contractor's Project Manager/technical lead responsibilities include, at a minimum:

- Manage all defined Contractor responsibilities in this Scope of Services.
- Manage Contractor's subcontractors, if any
- Develop the project plan and schedule, and update as needed
- Serve as the point person for all project issues
- Coordinate and oversee the day-to-day project activities of the project team
- Assess and report project feedback and status
- Escalate project issues, project risks, and other concerns
- Review all project deliverables and provide feedback
- Proactively propose/suggest options and alternatives for consideration
- Utilize change control procedures
- Prepare project documents and materials
- Manage and report on the project's budget

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

**B. On Site Work Requirements**

**1. Location of Work**

The work is to be performed, completed, and managed at the following locations:

Operations Center, 1CC  
 7285 Parsons Drive  
 Lansing, MI 48913

**2. Hours of Operation:**

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

**3. Travel:**

- a. No travel or expenses will be reimbursed.
- b. Travel time will not be reimbursed.

**4. Additional Security and Background Check Requirements:**

Contractor shall present certifications evidencing satisfactory Michigan State Police Background checks ICHAT and drug tests for all staff identified for assignment to this project.



In addition, Contractor personnel will be required to complete and submit an RI-8 Fingerprint Card for the National Crime Information Center (NCIC) Finger Prints, if required by project.

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

**1.202 State Staff, Roles, and Responsibilities**

The SOM will provide the following resources for the Contractor’s use on this project:

- Work space
- Minimal clerical support
- Desk
- Telephone
- PC workstation
- Printer
- Access to copiers and fax machine
- Trading partner support is provided by SOM
- Ongoing operations of the archiving solution platform and software are the responsibility of SOM

The SOM project team will consist of Executive Subject Matter Experts (SME’s), project support, and a MDIT Project Manager.

**Executive Subject Matter Experts**

The Executive Subject Matter Experts representing the business units involved will provide the vision for the business design and how the application shall provide for that vision. They shall be available on an as needed basis. The Executive SME’s will be empowered to:

- Resolve project issues in a timely manner
- Review project plan, status, and issues
- Resolve deviations from project plan
- Provide acceptance sign-off
- Utilize change control procedures
- Ensure timely availability of State resources
- Make key implementation decisions, as identified by the Contractor’s project manager, within 48-hours of their expected decision date.

Name	Agency/Division	Title
Randy Robb	OA/Messaging	Specialist
Greg Schaub	OA/Messaging	Specialist
Ken Partridge	OA/Messaging	Specialist

**State Project Manager- (MDIT)**

MDIT will provide a Project Manager who will be responsible for the SOM’s infrastructure and coordinate with the Contractor in determining the system configuration.

The SOM’s MDIT Project Manager will provide the following services:

- Provide State facilities, as needed
- Coordinate the SOM resources necessary for the project
- Facilitate coordination between various external contractors
- Facilitate communication between different State departments/divisions
- Provide acceptance and sign-off of deliverable/milestone
- Review and sign-off of timesheets and invoices
- Resolve project issues
- Escalate outstanding/high priority issues
- Utilize change control procedures
- Conduct regular and ongoing review of the project to confirm that it meets original objectives and requirements



- Document and archive all important project decisions
- Arrange, schedule and facilitate State staff attendance at all project meetings.

Name	Agency/Division	Title
Ramakrishna Surapaneni	MDIT	Project Manager

MDIT shall provide a Contract Compliance Inspector whose duties shall include, but not be limited to, supporting the management of the Contract.

Name	Agency/Division	Title
Mike Breen	MDIT/Bureau of Strategic Policy	Contract Compliance Inspector

**1.300 Project Plan**

**1.301 Project Plan Management**

**Orientation Meeting**

Upon 10 business days from the start of the Contract, the Contractor shall be required to attend an orientation meeting to discuss the content and procedures of the Contract. The meeting will be held in Lansing, Michigan, at a date and time mutually acceptable to the SOM and the Contractor. The SOM shall bear no cost for the time and travel of the Contractor for attendance at the meeting.

**Orientation Meeting**

- SOM will require the Contractor to attend an Orientation meeting
- Orientation Meeting will include review of Key Personnel, Project Plan, Recommended Infrastructure Design, and familiarize the Contractor with SOM administrative and operational processes.
- Meeting will occur within 10 business days of the start of the contract.
- Meeting will be held at a SOM determined location at a date and time mutually agreed upon between Contractor and SOM.
- The SOM will bear no cost for the time and travel of the Contractor for attendance at the meeting.

**Performance Review Meetings**

The SOM will require the Contractor to attend monthly meetings, at a minimum, to review the Contractor’s performance under the Contract. The meetings will be held in Lansing, Michigan, or by teleconference, as mutually agreed by the SOM and the Contractor. The SOM shall bear no cost for the time and travel of the Contractor for attendance at the meeting.

**Project Status Meetings**

- Project Status meetings will be required to be held between the Program Manager and the Contractor where regular updates to the above listed reports will be provided.
- Status meetings will be held on a weekly basis until close of project.
- Meeting will be held at a SOM determined location at a date and time mutually agreed upon between Contractor and SOM.
- The SOM will bear no cost for the time and travel of the Contractor for attendance at the meeting.

**Contractor to SOM Transition Meetings**

- Contractor to SOM Transition Meetings will be required once the mutually agreed upon infrastructure has been implemented within the SOM environment based on the listed Project Plan milestone.
- Transition Meetings will be used to provide information and knowledge training from Contractor to SOM staff in order to be able to operationally support the new environment.
- Transition meetings will be held on a weekly basis until close of project.
- Meeting will be held at a SOM determined location at a date and time mutually agreed upon between Contractor and SOM.
- The SOM will bear no cost for the time and travel of the Contractor for attendance at the meeting.



## Project Control

1. The Contractor shall carry out this project under the direction and control of MDIT.
2. Within 30 working days of the execution of the Contract, the Contractor shall submit to the SOM Project Manager(s) for final approval of the project plan. This project plan must be in agreement with Article 1, Section 1.104 Work and Deliverables, and must include the following:
  - The Contractor's project organizational structure.
  - The Contractor's staffing table with names and title of personnel assigned to the project. This must be in agreement with staffing of accepted proposal. Necessary substitutions due to change of employment status and other unforeseen circumstances may only be made with prior approval of the SOM.
  - The project work breakdown structure (WBS) showing sub-projects, activities and tasks, and resources required and allocated to each.
  - The time-phased plan in the form of a graphic display, showing each event, task, and decision point in the WBS.
3. The Contractor shall manage the project in accordance with the SOM Unified Information Technology Environment (SUITE) methodology, which includes standards for project management, systems engineering, and associated forms and templates which is available at <http://www.michigan.gov/suite>
  - a. Contractor shall use an automated tool for planning, monitoring, and tracking the Contract's progress and the level of effort of any Contractor personnel spent performing Services under the Contract. The tool shall have the capability to produce:
    - Staffing tables with names of personnel assigned to Contract tasks.
    - Project plans showing tasks, subtasks, deliverables, and the resources required and allocated to each (including detailed plans for all Services to be performed within the next 30 calendar days, updated semi-monthly).
    - Updates must include actual time spent on each task and a revised estimate to complete.
    - Graphs showing critical events, dependencies and decision points during the course of the Contract.
  - b. Any tool(s) used by Contractor for such purposes must produce information of a type and in a manner and format that will support reporting in compliance with the SOM standards.

## 1.302 Reports

Reports required to be furnished by the Contractor on an ongoing basis during the term of this Contract:

- Project Status including summary of activity during reporting activity.
- Project Plan with regular updates on task activities
- Recommended Infrastructure Design documents
- Accomplishments during the report period
- Action Items and Status
- Report of Open Issues and activities associated to correct
- Scheduled Maintenance Activities including activities coordination
- Contractor to SOM Transition Plan

Reporting formats must be submitted to the SOM's Project Manager for approval within 10 business days after the start date of the Contract. Once both parties have agreed to the format of the report, it shall become the standard to follow for the duration of the Contract.

## **1.400 Project Management**

### **1.401 Issue Management**

An issue is an identified event that if not addressed may affect schedule, scope, quality, or budget.

The Contractor shall maintain an issue log for issues relating to the provision of services under this Contract. The issue management log must be communicated to the SOM's Project Manager on an agreed upon schedule, with email notifications and updates. The issue log must be updated and must contain the following minimum elements:



- Description of issue
- Issue identification date
- Responsibility for resolving issue.
- Priority for issue resolution (to be mutually agreed upon by the SOM and the Contractor)
- Resources assigned responsibility for resolution
- Resolution date
- Resolution description

Issues shall be escalated for resolution from Level 1 through Level 3, as defined below:

- Level 1 – Technical Lead
- Level 2 – Project Manager
- Level 3 – State Executive

#### **1.402 Risk Management**

A risk is an unknown circumstance or event that, if it occurs, may have a positive or negative impact on the project.

The Contractor is responsible for establishing a risk management plan and process, including the identification and recording of risk items, prioritization of risks, definition of mitigation strategies, monitoring of risk items, and periodic risk assessment reviews with the SOM.

A risk management plan format shall be submitted to the SOM for approval within twenty (20) business days after the start date of the Contract. The risk management plan will be developed during the initial planning phase of the project, and be in accordance with the SOM's PMM methodology. Once both parties have agreed to the format of the plan, it shall become the standard to follow for the duration of the Contract. The plan must be updated bi-weekly, or as agreed upon.

The Contractor shall provide the tool to track risks. The Contractor shall work with the SOM and allow input into the prioritization of risks.

The Contractor is responsible for identification of risks for each phase of the project to the Project Manager. Mitigating and/or eliminating assigned risks will be the responsibility of the Contractor. The SOM will assume the same responsibility for risks assigned to them.

#### **1.403 Change Management**

Change management is defined as the process to communicate, assess, monitor, and control all changes to system resources and processes. The SOM and the Contractor shall employ change management in its administration of the Contract.

If a proposed contract change is approved by the Agency, the Contract Administrator will submit a request for change to the Department of Management and Budget, Purchasing Operations Buyer, who will make recommendations to the Director of Purchasing Operations regarding ultimate approval/disapproval of change request. If the DMB Purchasing Operations Director agrees with the proposed modification, and all required approvals are obtained (including State Administrative Board), the Purchasing Operations Buyer will issue an addendum to the Contract, via a Contract Change Notice. **Contractors who provide products or services prior to the issuance of a Contract Change Notice by the DMB Purchasing Operations, risk non-payment for the out-of-scope/pricing products and/or services.**

The Contractor shall employ change management procedures to handle such things as "out-of-scope" requests or changing business needs of the SOM while the migration is underway.

The Contractor shall employ the change control methodologies to justify changes in the processing environment, and to ensure those changes will not adversely affect performance or availability.



## 1.500 Acceptance

### 1.501 Criteria

The following criteria will be used by the SOM to determine acceptance of services and/or deliverables provided under this contract. The criteria also cover two aspects of compliance: performance of the Contractor in meeting the requirements, and contract compliance, both financial and non-financial.

- A. Document Deliverables - Documents include, but are not limited to plans, design documents, project schedules, user guides, and procedure manuals.
1. Documents are dated and in electronic format, compatible with State of Michigan software in accordance with Article 1.302.
  2. Requirements documents are reviewed and updated throughout the development process to assure requirements are delivered in the final product.
  3. Draft documents are not accepted as final deliverables.
  4. The documents will be reviewed and accepted in accordance with the requirements of the Contract.
  5. The SOM will review technical documents within 30 days of receipt.
    - a. Approvals will be written and signed by the SOM's Project Managers with assistance from other State resources and impacted Agencies.
    - b. Unacceptable issues will be documented and submitted to the Contractor.
    - c. After issues are resolved or waived, the Contractor shall resubmit documents for approval within 30 days of receipt.
- B. Software Deliverables - Software includes, but is not limited to, software product, development tools, support tools, data migration software, interfaces, integration software, and installation software.
1. Beta software is not accepted as final deliverable.
  2. The software will be reviewed and accepted in accordance with the requirements of the contract.
  3. MDIT will review software within a mutually agreed upon timeframe for acceptance of functionality, usability, installation, performance, security, standards compliance, backup/recovery, and operation.
    - a. Approvals will be written and signed by MDIT Project Managers.
    - b. Unacceptable issues will be documented and submitted to the Contractor.
    - c. After issues are resolved or waived, the Contractor shall resubmit software for approval within 30 days of receipt.
  4. Software is installed and configured, with assistance from MDIT, in an appropriate environment (e.g. development, conversion, QA testing, UAT testing, production, and training), after transition of application to the SOM.
  5. Contingency plans, de- installation procedures, and software are provided by the Contractor and approved by MDIT Project Managers.
  6. Final acceptance of the software will depend on the successful completion of User Acceptance Testing (UAT).
  7. Testing will demonstrate the system's compliance with the requirements of this project. At a minimum, the testing will confirm the following:
    - a. Functional - the capabilities of the system with respect to the functions and features described in the proposal.
    - b. Performance - the ability of the system to perform the workload throughput requirements. All problems should be completed satisfactorily within the allotted time frame.
  8. MDIT will review software license agreements within a mutually agreed upon timeframe.
    - a. Approvals will be written and signed by MDIT Project Managers.
    - b. Unacceptable issues will be documented and submitted to the Contractor.
    - c. After issues are resolved or waived, the Contractor shall resubmit the license agreement for approval and final signature by authorized State signatory within 30 days of receipt
- C. Service Deliverables - Services include, but are not limited to training, software installation, technical training, and support.
1. The services will be accepted in accordance with the requirements of the contract.



2. The SOM will review a Request for Approval of Services within 30 days of completion or implementation.
  - a. Approvals will be written and signed by the SOM's Project Manager.
  - b. Unacceptable issues will be documented and submitted to the Contractor.
  - c. After issues are resolved or waived, the Contractor shall resubmit a Request for Approval of Services for approval within 30 days of receipt.
3. The SOM will review migrated and converted data within 30 days of completion.
  - a. Approvals will be written and signed by the SOM's Project Manager.
  - b. Unacceptable issues will be documented and submitted to the Contractor.
  - c. After issues are resolved or waived, the Contractor shall resubmit a request for approval within 30 days of receipt.
4. State staff are properly trained and supplied with the proper tools and documentation to support, upgrade, monitor, operate, and configure the system in accordance with the requirements of this Contract and the accepted Contractor's proposal.
5. The Contractor has the tools and connectivity installed, in compliance with State standards, to properly support and monitor the system.

*Ongoing Operations - For ongoing activities, such as project status reports and work plan updates, acceptance of the initial report or plan will constitute acceptance of the deliverable, for purposes of services' payment.*

**1.502 Final Acceptance**

Final acceptance is expressly conditioned upon completion of ALL deliverables/milestones, completion of ALL tasks in the project plan as approved, completion of ALL applicable inspection and/or testing procedures, and the certification by the SOM that the Contractor has met the defined requirements.

**1.600 Compensation and Payment**

**1.601 Compensation and Payment**

The Contract is a firm, fixed priced, deliverable-based contract. Payment will be made based upon acceptance of a deliverable. Deliverables will be either a physical deliverables (documents) or a service deliverables. Service deliverables will be invoiced on a monthly basis. Physical deliverables will be invoiced upon acceptance of the deliverable. The physical deliverables are those listed in each scope element described in section 1.104, under Deliverables.

**Method of Payment**

Payment Net 45 days on approval of deliverables by Project Manager. Please refer to Attachment A for payment schedule.

**Travel**

The pricing for the deliverables is all-inclusive. The SOM will not pay for itemized travel costs.

**Statements of Work and Issuance of Purchase Orders**

- Unless otherwise agreed by the parties, each Statement of Work will include:
  1. Background
  2. Project Objective
  3. Scope of Work
  4. Deliverables
  5. Acceptance Criteria
  6. Project Control and Reports
  7. Specific Department Standards
  8. Payment Schedule
  9. Travel and Expenses
  10. Project Contacts
  11. Agency Responsibilities and Assumptions



- 12. Location of Where the Work is to be Performed
- 13. Expected Contractor Work Hours and Conditions

- The parties agree that the Services/Deliverables to be rendered by Contractor pursuant to this Contract (and any future amendments of it) will be defined and described in detail in Statements of Work or Purchase Orders (PO) executed under this Contract. Contractor shall not be obliged or authorized to commence any work to implement a Statement of Work until authorized via a PO issued against this Contract. Contractor shall perform in accordance with this Contract, including the SOM comments of Work/Purchase Orders executed under it.

**Invoicing and Payment**

**Invoices must provide and itemize, as applicable:**

- Contract number;
- Purchase Order number
- Contractor name, address, phone number, and Federal Tax Identification Number;
- Description of any commodities/equipment, including quantity ordered;
- Date(s) of delivery and/or date(s) of installation and set up;
- Price for each item, or Contractor’s list price for each item and applicable discounts;
- Maintenance charges;
- Net invoice price for each item;
- Shipping costs;
- Other applicable charges;
- Total invoice price; and
- Payment terms, including any available prompt payment discounts.

The SOM will pay maintenance and support charges on an annual basis in advance.

Incorrect or incomplete invoices will be returned to Contractor for correction and reissue.

**1.602 Holdback -Reserved**



## Article 2. Terms and Conditions

### 2.000 Contract Structure and Term

#### **2.001 Contract Term**

This Contract is for a period of three (3) years beginning December 15, 2009 through December 14, 2012. All outstanding Purchase Orders must also expire upon the termination (cancellation for any of the reasons listed in **Section 2.150**) of the Contract, unless otherwise extended under the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the 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. The Contract may be renewed for up to two (2) additional one (1) year periods.

#### **2.003 Legal Effect**

Contractor shall show acceptance of this Contract by signing two copies of the Contract and returning them to the Contract Administrator. The Contractor shall not proceed with the performance of the work to be done under the Contract, including the purchase of necessary materials, until both parties have signed the 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 the 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 or Blanket Purchase Order's accompanying Statement of Work. Exact quantities to be purchased are unknown, however, the Contractor shall be required to furnish all such materials and services as may be ordered during the 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**

The Contract, including any Statements of Work and Exhibits, to the extent not contrary to the 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**.

In the event of any inconsistency between the terms of the Contract and a Statement of Work, the terms of the Statement of Work will take precedence (as to that Statement of Work only); provided, however, that a Statement of Work may not modify or amend the terms of the Contract, which may be modified or amended only by a formal Contract amendment.



## 2.007 Headings

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

## 2.008 Form, Function & Utility

If the Contract is for use of more than one State agency and if the Deliverable/Service does not 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 the Contract is severable from all other provisions of the Contract and, if one or more of the provisions of the Contract is declared invalid, the remaining provisions of the Contract remain in full force and effect.

### 2.010 Consents and Approvals

Except as expressly provided otherwise in the Contract, if either party requires the consent or approval of the other party for the taking of any action under the Contract, 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 the Contract then the party has not waived the right to later insist upon strict adherence to that term, or any other term, of the Contract.

## 2.012 Survival

Any provisions of the 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 the Contract for any reason. Specific references to survival in the Contract are solely for identification purposes and not meant to limit or prevent the survival of any other section

### 2.020 Contract Administration

## 2.021 Issuing Office

This Contract is issued by the Department of Management and Budget, Purchasing Operations and MDIT (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 the Contract. The Purchasing Operations Contract Administrator for this Contract is:

State of Michigan  
Purchasing Operations  
Attention: Jacque Kuch  
PO Box 30026  
530 West Allegan  
Lansing, Michigan 48909

## 2.022 Contract Compliance Inspector

The Director of Purchasing Operations directs the person named below, or his or her designee, to monitor and coordinate the activities for the Contract on a day-to-day basis during its term. **Monitoring Contract activities does not imply the authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions and specifications of the 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 Contract Compliance Inspector for this Contract is:  
Michael Breen

**2.023 Project Manager**

The individual who will oversee the project is R. Surapaneni.

**2.024 Change Requests**

The State reserves the right to request from time to time any changes to the requirements and specifications of the Contract and the work to be performed by the Contractor under the Contract. During the course of ordinary business, it may become necessary for the State to discontinue certain business practices or create Additional Services/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 State requests or directs the Contractor to perform any Services/Deliverables that are outside the scope of the Contractor’s responsibilities under the Contract (“New Work”), the Contractor shall notify the State promptly, and before commencing performance of the requested activities, that it believes the requested activities are New Work. If the Contractor fails to notify the State before commencing performance of the requested activities, any such activities performed before the Contractor gives notice shall be conclusively considered to be in-scope Services/Deliverables, not New Work.

If the State requests or directs the Contractor to perform any services or provide deliverables that are consistent with and similar to the Services/Deliverables being provided by the Contractor under the Contract, but which the Contractor reasonably and in good faith believes are not included within the Statements of Work, then before performing such services or providing such deliverables, the Contractor shall notify the State in writing that it considers the services or deliverables to be an Additional Service/Deliverable for which the Contractor should receive additional compensation. If the Contractor does not so notify the State, the Contractor shall have no right to claim thereafter that it is entitled to additional compensation for performing that service or providing that deliverable. If the Contractor does so notify the State, then such a service or deliverable shall be governed by the Change Request procedure in this Section.

In the event prices or service levels are not acceptable to the State, the Additional Services or New Work shall be subject to competitive bidding based upon the specifications.

(1) Change Request at State Request

If the State should require Contractor to perform New Work, Additional Services or make changes to the Services that would affect the Contract completion schedule or the amount of compensation due Contractor (a “Change”), the State shall submit a written request for Contractor to furnish a proposal for carrying out the requested Change (a “Change Request”).

(2) Contractor Recommendation for Change Requests:

Contractor shall be entitled to propose a Change to the State, on its own initiative, should it be of the opinion that this would benefit the Contract.

(3) Upon receipt of a Change Request or on its own initiative, Contractor shall examine the implications of the requested Change on the technical specifications, Contract schedule and price of the Deliverables and Services and shall submit to the State without undue delay a written proposal for carrying out the Change. Contractor’s proposal will include any associated changes in the technical specifications, Contract schedule and price and method of pricing of the Services. If the Change is to be performed on a time and materials basis, the Amendment Labor Rates shall apply to the provision of such Services. If Contractor provides a written proposal and should Contractor be of the opinion that a requested Change is not to be recommended, it shall communicate its opinion to the State but shall nevertheless carry out the Change as specified in the written proposal if the State directs it to do so.



- (4) 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").
- (5) No proposed Change must 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.
- (6) If the State requests or directs the Contractor to perform any activities that Contractor believes constitute a Change, the Contractor shall 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 shall, at the request of the State, retract any out-of-scope work that would adversely affect the Contract.

**2.025 Notices**

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

State:

State of Michigan  
 Purchasing Operations  
 Attention: Jacque Kuch  
 PO Box 30026  
 530 West Allegan  
 Lansing, Michigan 48909

Contractor: Name: Jill Kempenaar  
 DLT Solutions  
 Address: 13861 Sunrise Valley Drive  
 Herndon, VA 20171

SubContractor's identified in this contract are:

Janalent North America LLC  
 Chris Ostler  
[Chris.ostler@janalent.com](mailto:Chris.ostler@janalent.com)  
 702-942-3387

Quest Software Public Sector  
 Mahdy Amine  
[Mahdy.amine@quest.com](mailto:Mahdy.amine@quest.com)  
 949-754-8604

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 shall have the authority to make binding commitments on Contractor's behalf within the bounds set forth in the 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 or must be deemed to be an employee, agent or servant of the State for any reason. Contractor shall be solely and entirely responsible for its acts and the acts of its agents, employees, servants and Subcontractors during the performance of the Contract.

**2.028 Covenant of Good Faith**

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

**2.029 Assignments**

Neither party may assign the Contract, or assign or delegate any of its duties or obligations under the Contract, to any other party (whether by operation of law or otherwise), without the prior written consent of the other party; provided, however, that the State may assign the Contract to any other State agency, department, division or department without the prior consent of Contractor and Contractor may assign the Contract to an affiliate so long as the affiliate is adequately capitalized and can provide adequate assurances that the affiliate can perform the 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 the Contract or the State's ability to recover damages.

Contractor may not, without the prior written approval of the State, assign its right to receive payments due under the 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 the Contract that all payments must be made to one entity continues.

If the Contractor intends to assign the contract or any of the Contractor's rights or duties under the Contract, the Contractor shall 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 the RFP and Contract or project to which it relates shall 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 the RFP and 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 shall obtain and pay any associated costs for all required governmental permits, licenses and approvals for the delivery, installation and performance of the Services. The State 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 Contractor 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 Public Act No. 442, as amended, 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 will 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 shall 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 shall 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 shall 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 shall 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 shall 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 will 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 will 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 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 Public Act No. 279, MCL 17.51 et seq., within 45 days after receipt, provided the State determines that the invoice was properly rendered.
- (d) All invoices should reflect actual work done. Specific details of invoices and payments will be agreed upon between the Contract Administrator and the Contractor after the proposed Contract Agreement has been signed and accepted by both the Contractor and the Director of Purchasing Operations, Department of Management & Budget. This activity will occur only upon the specific written direction from Purchasing Operations.

The specific payment schedule for any Contract(s) entered into, as the State and the Contractor(s) will mutually agree upon. The schedule should show payment amount and should reflect actual work done by the payment dates, less any penalty cost charges accrued by those dates. As a general policy statements shall be forwarded to the designated representative by the 15th day of the following month.

The Government 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 shall show verification of measurable progress at the time of requesting progress payments.

**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 shall 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 the Contract, nor will it constitute a waiver of any claims by one party against the other arising from unsettled claims or failure by a party to comply with 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 shall 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. Contractors are required to register with the State electronically at <http://www.cpexpress.state.mi.us>. As stated in Public Act 431 of 1984, all contracts that the State enters into for the purchase of goods and services shall 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, including the 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 shall 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 shall provide the Contract Compliance Inspector 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 will have the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor shall notify the State of the proposed assignment, will introduce the individual to the appropriate State representatives, and will provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State will provide a written explanation including reasonable detail outlining the reasons for the rejection.
- (d) Contractor shall not remove any Key Personnel from their assigned roles on the 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 will be established. Any Unauthorized Removal may be considered by the State to be a material breach of the Contract, in respect of which the State may elect to exercise its termination and cancellation rights.

**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 the 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 agrees to cause its personnel and the personnel of any Subcontractors to cooperate with the State and its agents and other contractors including the State’s Quality Assurance personnel. As reasonably requested by the State in writing, the Contractor shall 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 the Contract is very specific and agrees not to unnecessarily or unreasonably interfere with, delay or otherwise impeded Contractor’s performance under this Contract with the requests for access.

**2.067 Contract Management Responsibilities**

Contractor shall be responsible for all acts and omissions of its employees, as well as the acts and omissions of any other personnel furnished by Contractor to perform the Services. Contractor shall have overall responsibility for managing and successfully performing and completing the Services/Deliverables, subject to the overall direction and supervision of the State and with the participation and support of the State as specified in this Contract. Contractor’s duties will include monitoring and reporting the State’s performance of its participation and support responsibilities (as well as Contractor’s own responsibilities) and providing timely notice to the State in Contractor’s reasonable opinion if the State’s failure to perform its responsibilities in accordance with the Project Plan is likely to delay the timely achievement of any Contract tasks.

The Contractor shall provide the Services/Deliverables directly or through its affiliates, subsidiaries, subcontractors or resellers. Regardless of the entity providing the Service/Deliverable, the Contractor shall act as a single point of contact coordinating these entities to meet the State’s need for Services/Deliverables. Nothing in this Contract, however, shall be construed to authorize or require any party to violate any applicable law or regulation in its performance of this Contract.

**2.068 Contractor Return of State Equipment/Resources**

The Contractor shall return to the State any State-furnished equipment, facilities and other resources when no longer required for the Contract in the same condition as when provided by the State, reasonable wear and tear excepted.

**2.070 Subcontracting by Contractor**

**2.071 Contractor full Responsibility**

Contractor shall have 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 shall 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 shall have the right of prior written approval of all Subcontractors and to require Contractor to replace any Subcontractors found, in the reasonable judgment of the State, to be unacceptable. The State's request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good faith reasons. Replacement Subcontractor(s) for the removed Subcontractor shall be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed Subcontractor, the State will agree to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with a removed Subcontractor results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable 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 shall require the Subcontractor, to the extent of the Services to be performed by the Subcontractor, to be bound to Contractor by the terms of 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 shall be the responsibility of Contractor, and Contractor shall remain responsible for the performance of its Subcontractors to the same extent as if Contractor had not subcontracted such performance. Contractor shall make all payments to Subcontractors or suppliers of Contractor. Except as otherwise agreed in writing by the State and Contractor, the State will not be obligated to direct payments for the Services other than to Contractor. The State's written approval of any Subcontractor engaged by Contractor to perform any obligation under this Contract shall not relieve Contractor of any obligations or performance required under this Contract. A list of the Subcontractors, if any, approved by the State as of the execution of this Contract, together with a copy of the applicable subcontract is attached.

### **2.074 Flow Down**

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

### **2.075 Competitive Selection**

The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the 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 shall 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 will also be expected to 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 will be expected to 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. It is expected the Contractor shall present these documents to the prospective employee before the Contractor presents the individual to the State as a proposed resource. Contractor staff will be expected to comply with all Physical Security procedures in place within the facilities where they are working.

### **2.092 Security Breach Notification**

If the Contractor breaches this Section, the Contractor shall (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 shall report to the State in writing any use or disclosure of Confidential Information, whether suspected or actual, other than as provided for by the 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**

Contractors with access to credit/debit card cardholder data must adhere to the Payment Card Industry (PCI) Data Security requirements. Contractor agrees that they are responsible for security of cardholder data in their possession. Contractor agrees that data can ONLY be used for assisting the State in completing a transaction, supporting a loyalty program, supporting the State, providing fraud control services, or for other uses specifically required by law.

Contractor agrees to provide business continuity in the event of a major disruption, disaster or failure.

The Contractor shall contact the Department of Management and Budget, Financial Services immediately to advise them of any breaches in security where card data has been compromised. In the event of a security intrusion, the Contractor agrees the Payment Card Industry representative, or a Payment Card Industry approved third party, will be provided with full cooperation and access to conduct a thorough security review. The review will validate compliance with the Payment Card Industry Data Security Standard for protecting cardholder data.

Contractor agrees to properly dispose sensitive cardholder data when no longer needed. The Contractor shall continue to treat cardholder data as confidential upon contract termination.

The Contractor shall provide the Department of Management and Budget, Financial Services documentation showing PCI Data Security certification has been achieved. The Contractor shall advise the Department of Management and Budget, Financial Services of all failures to comply with the PCI Data Security Requirements. Failures include, but are not limited to system scans and self-assessment questionnaires. The Contractor shall provide a time line for corrective action.



## **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 shall 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 shall 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 will 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 the Contract for any reason, Contractor shall certify to the State that Contractor has destroyed all State Confidential Information.

### **2.103 Exclusions**

Notwithstanding the foregoing, the provisions in this Section 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 this Section 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 shall 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 the 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 the Contract.

#### **2.113 Retention of Records**

Contractor shall maintain at least until the end of the Audit Period all pertinent financial and accounting records (including time sheets and payroll records, and information pertaining to the Contract and to the Services, equipment, and commodities provided under the Contract) pertaining to the Contract 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 shall 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**

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 the contract, whichever is earlier.

In addition to other available remedies, the difference between the payment received and the correct payment amount is greater than 10%, then the Contractor shall 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) RESERVED
- (c) RESERVED
- (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 shall 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) The 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 shall notify the State about the nature of the conflict or appearance of impropriety within two days of learning about it.
- (h) Neither Contractor nor any Affiliates, nor any employee of either has accepted or must accept anything of value based on an understanding that the actions of the Contractor or Affiliates or employee on behalf of the State would be influenced. Contractor shall not attempt to influence any State employee by the direct or indirect offer of anything of value.
- (i) Neither Contractor nor any Affiliates, nor any employee of either has paid or agreed to pay any person, other than bona fide employees and consultants working solely for Contractor or the Affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.
- (j) The prices proposed by Contractor were arrived at independently, without consultation, communication, or agreement with any other bidder for the purpose of restricting competition; the prices quoted were not knowingly disclosed by Contractor to any other bidder; and no attempt was made by Contractor to induce any other person to submit or not submit a proposal for the purpose of restricting competition.
- (k) All financial statements, reports, and other information furnished by Contractor to the State as part of its response to the RFP or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Contractor as of the respective dates, or for the respective periods, covered by the financial statements, reports, other information. Since the respective dates or periods covered by the financial statements, reports, or other information, there have been no material adverse changes in the business, properties, financial condition, or results of operations of Contractor.
- (l) All written information furnished to the State by or for the Contractor in connection with this Contract, including its bid, is true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make the information not misleading.
- (m) It is not in material default or breach of any other contract or agreement that it may have with the State or any of its departments, commissions, boards, or agencies. Contractor further represents and warrants that it has not been a party to any contract with the State or any of its departments that was terminated by the State or the department within the previous five years for the reason that Contractor failed to perform or otherwise breached an obligation of the contract.
- (n) If any of the certifications, representations, or disclosures made in the Contractor's original bid response change after contract award, the Contractor is required to report those changes immediately to the Department of Management and Budget, Purchasing Operations.



**2.122 Warranty of Merchantability**

Goods provided by Contractor under this agreement shall be merchantable. All goods provided under this Contract shall be of good quality within the description given by the State, shall be fit for their ordinary purpose, shall be adequately contained and packaged within the description given by the State, shall conform to the agreed upon specifications, and shall conform to the affirmations of fact made by the Contractor or on the container or label.

**2.123 Warranty of Fitness for a Particular Purpose - Reserved**

**2.124 Warranty of Title - Reserved**

**2.125 Equipment Warranty - Reserved**

**2.126 Equipment to be New - Reserved**

**2.127 Prohibited Products - Reserved**

**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 shall provide proof of the minimum levels of insurance coverage as indicated below. The insurance must protect the State from claims that 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 provided relative to this Contract/Purchase Order is PRIMARY and NON-CONTRIBUTING to any comparable liability insurance (including self-insurances) carried by the State.

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

The insurers selected by Contractor shall 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/dleg](http://www.michigan.gov/dleg).

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 shall 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 shall 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 shall 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 a self-insurer provides the applicable coverage, proof must be provided of approved self-insured authority by the jurisdiction of domicile. For employees working outside of the state of qualification, Contractor shall 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

5. Employee Fidelity, including Computer Crimes, insurance naming the State as a loss payee, providing coverage for direct loss to the State and any legal liability of the State arising out of or related to fraudulent or dishonest acts committed by the employees of Contractor or its Subcontractors, acting alone or in collusion with others, in a minimum amount of one million dollars (\$1,000,000.00) with a maximum deductible of fifty thousand dollars (\$50,000.00).

6. Umbrella or Excess Liability Insurance in a minimum amount of ten million dollars (\$10,000,000.00), which must apply, at a minimum, to the insurance required in Subsection 1 (Commercial General Liability) above.

7. Professional Liability (Errors and Omissions) Insurance with the following minimum coverage: three million dollars (\$3,000,000.00) each occurrence and three million dollars (\$3,000,000.00) annual aggregate.

8. Fire and Personal Property Insurance covering against any loss or damage to the office space used by Contractor for any reason under this Contract, and the equipment, software and other contents of the office space, including without limitation, those contents used by Contractor to provide the Services to the State, up to its replacement value, where the office space and its contents are under the care, custody and control of Contractor. The policy must cover all risks of direct physical loss or damage, including without limitation, flood and earthquake coverage and coverage for computer hardware and software. The State must be endorsed on the policy as a loss payee as its interests appear.



### **2.132 Subcontractor Insurance Coverage**

Except where the State has approved in writing a Contractor subcontract with other insurance provisions, Contractor shall 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(s) must fully comply with the insurance coverage required in this Section. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

### **2.133 Certificates of Insurance and Other Requirements**

Contractor shall 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. **The Contract Number or the Purchase Order Number 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 coverage afforded under the policies WILL 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 the Contract or Purchase Order number affected. Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor shall provide evidence that the State and its agents, officers and employees are listed as additional insured 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 shall maintain all required insurance coverage throughout the term of the 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 shall pay that cost upon demand by the State.

## **2.140 Indemnification**

### **2.141 General Indemnification**

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



### **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 the 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-Reserved**

### **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 the 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 shall notify the State in writing whether Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying Contractor of a claim and 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 shall 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 shall, 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 shall 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 shall 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 the contract, and the State in its sole discretion determines that the breach is curable, then the State will 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 shall 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.
- (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 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 the 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 the 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 will pay the Contractor for only the work completed to that point under the 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 shall (a) stop all work as specified in the notice of termination, (b) take any action that may be necessary, or that the State may direct, for preservation and protection of Deliverables or other property derived or resulting from 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, and (d) 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**

Any 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 the Contract, and the Contractor in its sole discretion determines that the breach is curable, then the Contractor shall 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 shall discharge its obligations under **Section 2.160** before it terminates the Contract.

## **2.170 Transition Responsibilities**

### **2.171 Contractor Transition Responsibilities**

If the State terminates this contract, for convenience or cause, or if the 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 2.141, 2.142, 2.143, 2.144, and 2.145**.

### **2.172 Contractor Personnel Transition**

The Contractor shall work with the State, or a specified third party, to develop a transition plan setting forth the specific tasks and schedule to be accomplished by the parties, to effect an orderly transition. The Contractor shall allow as many personnel as practicable to remain on the job to help the State, or a specified third party, maintain the continuity and consistency of the services required by this Contract. In addition, during or following the transition period, in the event the State requires the Services of the Contractor's subcontractors or Contractors, 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 Contractors. Contractor shall 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 shall provide the State with asset management data generated from the inception of this Contract through the date on which this Contractor is terminated in a comma-delineated format unless otherwise requested by the State. The Contractor shall 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 shall 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 the 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, the termination provisions of this Contract must govern reimbursement. If the transition results from expiration, the Contractor shall 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 shall 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 reconcile all accounts between the State and the Contractor, complete any pending post-project reviews and perform any others obligations 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 the 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 2.150**. Upon receipt of the stop work order, Contractor shall 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 2.130**.

#### **2.182 Cancellation or Expiration of Stop Work Order**

The Contractor shall 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, the Contract price, or both, and the 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 the 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 the Contract. Any adjustment will 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 2.153**, 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.

### **2.190 Dispute Resolution**

#### **2.191 In General**

Any claim, counterclaim, or dispute between the State and Contractor arising out of or relating to the 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 the Contract, or the time for Contractor's performance, Contractor shall 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:

(1) 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.

(2) During the course of negotiations, all reasonable requests made by one party to another for non-privileged information reasonably related to the Contract will be honored in order that each of the parties may be fully advised of the other's position.

(3) 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.

(4) 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 will not be construed to prevent either party from instituting, and a party is authorized to institute, formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or 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 the Contract.

## 2.193 Injunctive Relief

The only circumstance in which disputes between the State and Contractor shall 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 the 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 the 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 the 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 the Contract, Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, and marital status, 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 will 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 the 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 the 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 shall 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 shall 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**

The rates of wages and fringe benefits to be paid each class of individuals employed by the Contractor, its subcontractors, their subcontractors, and all persons involved with the performance of this Contract in privity of contract with the Contractor shall not be less than the wage rates and fringe benefits established by the Michigan Department of Labor and Economic Development, Wage and Hour Bureau, schedule of occupational classification and wage rates and fringe benefits for the local where the work is to be performed. The term Contractor shall include all general contractors, prime contractors, project managers, trade contractors, and all of their contractors or subcontractors and persons in privity of contract with them.

The Contractor, its subcontractors, their subcontractors and all persons involved with the performance of this contract in privity of contract with the Contractor shall keep posted on the work site, in a conspicuous place, a copy of all wage rates and fringe benefits as prescribed in the contract. You must also post, in a conspicuous place, the address and telephone number of the Michigan Department of Labor and Economic Development, the office responsible for enforcement of the wage rates and fringe benefits. You shall keep an accurate record showing the name and occupation of the actual wage and benefits paid to each individual employed in connection with this contract. This record shall be available to the State upon request for reasonable inspection.

If any trade is omitted from the list of wage rates and fringe benefits to be paid to each class of individuals by the Contractor, it is understood that the trades omitted shall also be paid not less than the wage rate and fringe benefits prevailing in the local where the work is to be performed.

### **2.210 Governing Law**

#### **2.211 Governing Law**

The 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 shall comply with all applicable state, federal and local laws and ordinances in providing the Services/Deliverables.

#### **2.213 Jurisdiction**

Any dispute arising from the 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.

The Contractor’s liability for damages to the State is limited to two times the value of the Contract or \$500,000 which ever is higher.

The State’s liability for damages to the Contractor is limited to the value of the Contract.

**2.230 Disclosure Responsibilities**

**2.231 Disclosure of Litigation**

Contractor shall 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 the 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 shall 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 that 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.

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:

- (a) the ability of Contractor (or a Subcontractor) to continue to perform this Contract according to its terms and conditions, or
- (b) 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 shall provide the State all reasonable assurances requested by the State to demonstrate that:
  - (1) Contractor and its Subcontractors will be able to continue to perform this Contract and any Statements of Work according to its terms and conditions, and
  - (2) 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 shall 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 shall notify DMB Purchasing Operations.
  - (2) Contractor shall 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 shall also notify DMB Purchase 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, with the exception of the Commercial Software Items covered under the Escrow Agreement attached hereto, 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.

**2.240 Performance**

**2.241 Time of Performance**

- (a) Contractor shall 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**, Contractor shall notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any 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 shall notify the State in a timely manner and must use commercially reasonable efforts to perform its obligations according to the Contract time periods notwithstanding the State’s failure. Contractor shall not be in default for a delay in performance to the extent the delay is caused by the State.

**2.242 Service Level Agreement (SLA)**

- (a) SLAs will be completed with the following operational considerations:
  - (1) SLAs will not be calculated for individual Incidents where any event of Excusable Failure has been determined; Incident means any interruption in Services.
  - (2) SLAs will not be calculated for individual Incidents where loss of service is planned and where the State has received prior notification or coordination.
  - (3) SLAs will not apply if the applicable Incident could have been prevented through planning proposed by Contractor and not implemented at the request of the State. To invoke this consideration, complete documentation relevant to the denied planning proposal must be presented to substantiate the proposal.
  - (4) Time period measurements will be based on the time Incidents are received by the Contractor and the time that the State receives notification of resolution based on 24x7x365 time period, except that the time period measurement will be suspended based on the following:
    - (i) Time period(s) will not apply where Contractor does not have access to a physical State Location and where access to the State Location is necessary for problem identification and resolution.
    - (ii) Time period(s) will not apply where Contractor needs to obtain timely and accurate information or appropriate feedback and is unable to obtain timely and accurate information or appropriate feedback from the State.
- (b) Chronic Failure for any Service(s) will be defined as three unscheduled outage(s) or interruption(s) on any individual Service for the same reason or cause or if the same reason or cause was reasonably



discoverable in the first instance over a rolling 30 day period. Chronic Failure will result in the State’s option to terminate the effected individual Service(s) and procure them from a different Contractor for the chronic location(s) with Contractor to pay the difference in charges for up to three additional months. The termination of the Service will not affect any tiered pricing levels.

- (c) Root Cause Analysis will be performed on any Business Critical outage(s) or outage(s) on Services when requested by the Contract Administrator. Contractor shall provide its analysis within two weeks of outage(s) and provide a recommendation for resolution.
- (d) All decimals must be rounded to two decimal places with five and greater rounding up and four and less rounding down unless otherwise specified.

**2.243 Liquidated Damages – Reserved**

**2.244 Excusable Failure**

Neither party will be liable for any default, damage or delay in the performance of its obligations under the Contract to the extent the default, damage or delay is caused by government regulations or requirements (executive, legislative, judicial, military or otherwise), power failure, electrical surges or current fluctuations, lightning, earthquake, war, water or other forces of nature or acts of God, delays or failures of transportation, equipment shortages, suppliers’ failures, or acts or omissions of common carriers, fire; riots, civil disorders; 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 the Contract for so long as the delay in performance continues; (b) the State may terminate any portion of the 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 shall 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 the Contract except to the extent that a Subcontractor is itself subject to an Excusable Failure condition described above and Contractor cannot reasonably circumvent the effect of the Subcontractor’s default or delay in performance through the use of alternate sources, workaround plans or other means.

**2.250 Approval of Deliverables**

**2.251 Delivery of Deliverables - Reserved**



## **2.252 Contractor System Testing**

Contractor shall be responsible for System Testing each Custom Software Deliverable in Contractor's development environment prior to turning over the Custom Software Deliverable to the State for User Acceptance Testing and approval. Contractor's System Testing shall include the following, at a minimum, plus any other testing required by CMM Level 3 or Contractor's system development methodology:

Contractor shall be responsible for performing Unit Testing and incremental Integration Testing of the components of each Custom Software Deliverable.

Contractor's System Testing will also include Integration Testing of each Custom Software Deliverable to ensure proper inter-operation with all prior software Deliverables, interfaces and other components that are intended to inter-operate with such Custom Software Deliverable, and will include Regression Testing, volume and stress testing to ensure that the Custom Software Deliverables are able to meet the State's projected growth in the number and size of transactions to be processed by the Application and number of users, as such projections are set forth in the applicable Statement of Work.

Contractor's System Testing will also include Business Function Testing and Technical Testing of each Application in a simulated production environment. Business Function Testing will include testing of full work streams that flow through the Application as the Application will be incorporated within the State's computing environment. The State shall participate in and provide support for the Business Function Testing to the extent reasonably requested by Contractor. Within ten (10) days before the commencement of Business Function Testing pursuant to this Section, Contractor shall provide the State for State review and written approval Contractor's test plan for Business Function Testing.

Within five (5) Business Days following the completion of System Testing pursuant to this **Section**, Contractor shall provide to the State a testing matrix establishing that testing for each condition identified in the System Testing plans has been conducted and successfully concluded. To the extent that testing occurs on State premises, the State shall be entitled to observe or otherwise participate in testing under this Section as the State may elect.

## **2.253 Approval of Deliverables, In General - Reserved**

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

### **2.255 Process for Approval of Custom Software Deliverables**

The State will conduct UAT of each Custom Software Deliverable in accordance with the following procedures to determine whether it meets the criteria for State approval – i.e., whether it conforms to and performs in accordance with its specifications without material deficiencies.



Within thirty (30) days (or such other number of days as the parties may agree to in writing) prior to Contractor’s delivery of any Custom Software Deliverable to the State for approval, Contractor shall provide to the State a set of proposed test plans, including test cases, scripts, data and expected outcomes, for the State’s use (which the State may supplement in its own discretion) in conducting UAT of the Custom Software Deliverable. Contractor, upon request by the State, shall provide the State with reasonable assistance and support during the UAT process.

For the Custom Software Deliverables listed in an attachment, the State Review Period for conducting UAT will be as indicated in the attachment. For any other Custom Software Deliverables not listed in an attachment, the State Review Period shall be the number of days agreed in writing by the parties (failing which it shall be forty-five (45) days by default). The State Review Period for each Custom Software Deliverable will begin when Contractor has delivered the Custom Software Deliverable to the State accompanied by the certification required by this **Section** and the State’s inspection of the Deliverable has confirmed that all components of it have been delivered.

The State’s UAT will consist of executing test scripts from the proposed testing submitted by Contractor, but may also include any additional testing deemed appropriate by the State. If the State determines during the UAT that the Custom Software Deliverable contains any deficiencies, the State will notify Contractor of the deficiency by making an entry in an incident reporting system available to both Contractor and the State. Contractor shall modify promptly the Custom Software Deliverable to correct the reported deficiencies, conduct appropriate System Testing (including, where applicable, Regression Testing) to confirm the proper correction of the deficiencies and re-deliver the corrected version to the State for re-testing in UAT. Contractor shall coordinate the re-delivery of corrected versions of Custom Software Deliverables with the State so as not to disrupt the State’s UAT process. The State will promptly re-test the corrected version of the Software Deliverable after receiving it from Contractor.

Within three (3) business days after the end of the State Review Period, the State will give Contractor a written notice indicating the State’s approval or rejection of the Custom Software Deliverable according to the criteria and process set out in this **Section**.

**2.256 Final Acceptance**

“Final Acceptance” shall be considered to occur when the Custom Software Deliverable to be delivered has been approved by the State and has been operating in production without any material deficiency for fourteen (14) consecutive days. If the State elects to defer putting a Custom Software Deliverable into live production for its own reasons, not based on concerns about outstanding material deficiencies in the Deliverable, the State shall nevertheless grant Final Acceptance of the Project.

**2.260 Ownership**

**2.261 Ownership of Work Product by State - Reserved**

**2.262 Vesting of Rights - Reserved**

**2.263 Rights in Data**

The State is the owner of all data made available by the State to the Contractor or its agents, Subcontractors or representatives under the Contract. The Contractor shall 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 shall not possess or assert any lien or other right against the State’s data. Without limiting the generality of this Section, the Contractor shall 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 shall comply at all times with all laws and regulations applicable to the personally identifiable information.



The State is the owner of all State-specific data under the Contract. The State may use the data provided by the Contractor for any purpose. The State will not possess or assert any lien or other right against the Contractor's data. Without limiting the generality of this Section, the State 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 shall continue to own their respective proprietary technologies developed before entering into the Contract. Any hardware bought through the Contractor by the State, and paid for by the State, will be owned by the State. Any software 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 shall 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 shall 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 (Michigan Delivery Extended Agreements Locally**

Public Act 431 of 1984 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](http://www.michigan.gov/buymichiganfirst). Unless otherwise stated, the Contractor shall ensure that the non-state agency is an authorized purchaser before extending the Contract pricing.

The Contractor shall supply 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 shall 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 will be included in determining the appropriate rate wherever tiered pricing based on quantity is provided.

#### **2.282 State Employee Purchases - Reserved**

#### **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 recyclables; 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:** For the purposes of this Section, “Hazardous Materials” is a generic term used to describe asbestos, ACBMs, PCBs, petroleum products, construction materials including paint thinners, solvents, gasoline, oil, and any other material the manufacture, use, treatment, storage, transportation or disposal of which is regulated by the federal, state or local laws governing the protection of the public health, natural resources or the environment. This includes, but is not limited to, materials the as batteries and circuit packs, and other materials that are regulated as (1) “Hazardous Materials” under the Hazardous Materials Transportation Act, (2) “chemical hazards” under the Occupational Safety and Health Administration standards, (3) “chemical substances or mixtures” under the Toxic Substances Control Act, (4) “pesticides” under the Federal Insecticide Fungicide and Rodenticide Act, and (5) “hazardous wastes” as defined or listed under the Resource Conservation and Recovery Act.

- (a) The Contractor shall use, handle, store, dispose of, process, transport and transfer any material considered a Hazardous Material according to all federal, State and local laws. The State must provide a safe and suitable environment for performance of Contractor’s Work. Before the commencement of Work, the State must advise the Contractor of the presence at the work site of any Hazardous Material to the extent that the State is aware of the Hazardous Material. If the Contractor encounters material reasonably believed to be a Hazardous Material and which may present a substantial danger, the Contractor shall immediately stop all affected Work, notify the State in writing about the conditions encountered, and take appropriate health and safety precautions.
- (b) Upon receipt of a written notice, the State will investigate the conditions. If (a) the material is a Hazardous Material that may present a substantial danger, and (b) the Hazardous Material was not brought to the site by the Contractor, or does not result in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Materials, the State must order a suspension of Work in writing. The State must proceed to have the Hazardous Material removed or rendered harmless. In the alternative, the State must terminate the affected Work for the State’s convenience.
- (c) Once the Hazardous Material has been removed or rendered harmless by the State, the Contractor shall resume Work as directed in writing by the State. Any determination by the Michigan Department of Community Health or the Michigan Department of Environmental Quality that the Hazardous Material has either been removed or rendered harmless is binding upon the State and Contractor for the purposes of resuming the Work. If any incident with Hazardous Material results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in a time as mutually agreed by the parties.
- (d) If the Hazardous Material was brought to the site by the Contractor, or results in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor shall bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material according to Applicable Laws to the condition approved by applicable regulatory agency(ies).



**Labeling:** Michigan has a Consumer Products Rule pertaining to labeling of certain products containing volatile organic compounds. For specific details visit [http://www.michigan.gov/deq/0,1607,7-135-3310\\_4108-173523--,00.html](http://www.michigan.gov/deq/0,1607,7-135-3310_4108-173523--,00.html)

**Refrigeration and Air Conditioning:** The Contractor shall 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 shall establish a program to promote cost-effective waste reduction in all operations and facilities covered by this contract. The Contractor's programs shall 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 Deliverables**

#### **2.301 Software**

A list of the items of software the State is required to purchase for execution the Contract is attached. The list includes all software required to complete the Contract and make the Deliverables operable. The attachment also identifies certain items of software to be provided by the State.

#### **2.302 Hardware - Reserved**

#### **2.303 Equipment to be New - Reserved**

#### **2.304 Equipment to be New and Prohibited Products - Reserved**

### **2.310 Software Warranties**

#### **2.311 Performance Warranty - Reserved**

#### **2.312 No Surreptitious Code Warranty**

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

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

As used in this Contract, "Unauthorized Code" means any virus, Trojan horse, spyware, worm or other Software routines or components designed to permit unauthorized access to disable, erase, or otherwise harm software, equipment, or data; or to perform any other such actions. The term Unauthorized Code does not include Self-Help Code. Unauthorized Code does not include Software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee's computer system(s) (e.g. remote access via modem) for purposes of maintenance or technical support.

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



### **2.313 Calendar Warranty**

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

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

### **2.314 Third-party Software Warranty**

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

### **2.315 Physical Media Warranty**

Contractor represents and warrants that each licensed copy of the Software provided by the Contractor is free from physical defects in the media that tangibly embodies the copy. This warranty does not apply to defects discovered more than (30) thirty days after that date of Final Acceptance of the Software by the State. This warranty does not apply to defects arising from acts of Excusable Failure. If the Contractor breaches this warranty, then the State shall be entitled to replacement of the non-compliant copy by Contractor, at Contractor's expense (including shipping and handling).

### **2.320 Software Licensing**

#### **2.321 Cross-License, Deliverables Only, License to Contractor-Reserved**

#### **2.322 Cross-License, Deliverables and Derivative Work, License to Contractor**

The State grants to the Contractor, the royalty-free, world-wide, non-exclusive right and license under any Deliverable and/or Derivative Work now or in the future owned by the State, or with respect to which the State has a right to grant such rights or licenses, to the extent required by the Contractor to market the Deliverables and/or Derivative Work and exercise its full rights in the Deliverables and/or Derivative Work, including, without limitation, the right to make, use and sell products and services based on or incorporating such Deliverables and/or Derivative Work.

#### **2.323 License Back to the State**

Unless otherwise specifically agreed to by the State, before initiating the preparation of any Deliverable that is a Derivative of a preexisting work, the Contractor shall cause the State to have and obtain the irrevocable, nonexclusive, worldwide, royalty-free right and license to (1) use, execute, reproduce, display, perform, distribute internally or externally, sell copies of, and prepare Derivative Works based upon all preexisting works and Derivative Works thereof, and (2) authorize or sublicense others from time to time to do any or all of the foregoing.



### **2.324 License Retained by Contractor**

Contractor grants to the State a non-exclusive, royalty-free, site-wide, irrevocable, transferable license to use the Software and related documentation according to the terms and conditions of this Contract. For the purposes of this license, “site-wide” includes any State of Michigan office regardless of its physical location.

The State may modify the Software and may combine such with other programs or materials to form a derivative work. The State will own and hold all copyright, trademarks, patent and other intellectual property rights in any derivative work, excluding any rights or interest in Software other than those granted in this Contract.

The State may copy each item of Software to multiple hard drives or networks unless otherwise agreed by the parties.

The State will make and maintain no more than one archival copy of each item of Software, and each copy will contain all legends and notices and will be subject to the same conditions and restrictions as the original. The State may also make copies of the Software in the course of routine backups of hard drive(s) for the purpose of recovery of hard drive contents.

In the event that the Contractor shall, for any reason, cease to conduct business, or cease to support the Software, the State shall have the right to convert these licenses into perpetual licenses, with rights of quiet enjoyment, but subject to payment obligations not to exceed the then current rates.

### **2.325 Pre-existing Materials for Custom Software Deliverables**

Neither Contractor nor any of its Subcontractors shall incorporate any preexisting materials (including Standard Software) into Custom Software Deliverables or use any pre-existing materials to produce Custom Software Deliverables if such pre-existing materials will be needed by the State in order to use the Custom Software Deliverables unless (i) such pre-existing materials and their owners are identified to the State in writing and (ii) such pre-existing materials are either readily commercially available products for which Contractor or its Subcontractor, as the case may be, has obtained a license (in form and substance approved by the State) in the name of the State, or are materials that Contractor or its Subcontractor, as the case may be, has the right to license to the State and has licensed to the State on terms and conditions approved by the State prior to using such pre-existing materials to perform the Services.

## **2.330 Source Code Escrow**

### **2.331 Definition**

“Source Code Escrow Package” shall mean:

- (a) A complete copy in machine-readable form of the source code and executable code of the Licensed Software, including any updates or new releases of the product;
- (b) A complete copy of any existing design documentation and user documentation, including any updates or revisions; and/or
- (c) Complete instructions for compiling and linking every part of the source code into executable code for purposes of enabling verification of the completeness of the source code as provided below. Such instructions shall include precise identification of all compilers, library packages, and linkers used to generate executable code.

### **2.332 Delivery of Source Code into Escrow**

Contractor shall deliver a Source Code Escrow Package to the Escrow Agent, pursuant to the Escrow Contract, which shall be entered into on commercially reasonable terms subject to the provisions of this Contract within (30) thirty days of the execution of this Contract.



### **2.333 Delivery of New Source Code into Escrow**

If at anytime during the term of this Contract, the Contractor provides a maintenance release or upgrade version of the Licensed Software, Contractor shall within ten (10) days deposit with the Escrow Agent, in accordance with the Escrow Contract, a Source Code Escrow Package for the maintenance release or upgrade version, and provide the State with notice of the delivery.

### **2.334 Verification**

The State reserves the right at any time, but not more than once a year, either itself or through a third party contractor, upon thirty (30) days written notice, to seek verification of the Source Code Escrow Package.

### **2.335 Escrow Fees**

The Contractor shall pay all fees and expenses charged by the Escrow Agent.

### **2.336 Release Events**

The Source Code Escrow Package may be released from escrow to the State, temporarily or permanently, upon the occurrence of one or more of the following:

- (a) The Contractor becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under bankruptcy or insolvency law, whether domestic or foreign;
- (b) The Contractor has wound up or liquidated its business voluntarily or otherwise and the State has reason to believe that such events will cause the Contractor to fail to meet its warranties and maintenance obligations in the foreseeable future;
- (c) The Contractor voluntarily or otherwise discontinues support of the provided products or fails to support the products in accordance with its maintenance obligations and warranties.

### **2.337 Release Event Procedures**

If the State desires to obtain the Source Code Escrow Package from the Escrow Agent upon the occurrence of an Event in this **Section**, then:

- (a) The State shall comply with all procedures in the Escrow Contract;
- (b) The State shall maintain all materials and information comprising the Source Code Escrow Package in confidence in accordance with this Contract;
- (c) If the release is a temporary one, then the State shall promptly return all released materials to Contractor when the circumstances leading to the release are no longer in effect.

### **2.338 License**

Upon release from the Escrow Agent pursuant to an event described in this **Section**, the Contractor automatically grants the State a non-exclusive, irrevocable license to use, reproduce, modify, maintain, support, update, have made, and create Derivative Works. Further, the State shall have the right to use the Source Code Escrow Package in order to maintain and support the Licensed Software so that it can be used by the State as set forth in this Contract.

### **2.339 Derivative Works**

Any Derivative Works to the source code released from escrow that are made by or on behalf of the State shall be the sole property of the State. The State acknowledges that its ownership rights are limited solely to the Derivative Works and do not include any ownership rights in the underlying source code.

### 2.400 Other Provisions

### **2.411 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 the 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**  
Functional Requirements

FUNCTIONAL REQUIREMENTS	MANDATORY (M) OR OPTIONAL (O)	YES	YES WITH MODIFICATIONS	NO	REQ RESPONSE (A, B, C, D, E)	COMMENTS
<b>1. Message Platforms</b>						
<i>a. GroupWise</i>	M	X			A	NOVELL GROUPWISE IS SUPPORTED. SEE ATTACHED DATA SHEET FOR ADDITIONAL INFORMATION
<i>b. Exchange</i>	M	X			A	MICROSOFT EXCHANGE IS SUPPORTED. SEE ATTACHED DATA SHEET FOR ADDITIONAL INFORMATION
<b>2. Scalability</b>						
<i>The overall system performance should be unaffected if the capacity increases at an overall rate of 150% per year</i>	M	X			A	THE ARCHIVE MANAGER INFRASTRUCTURE MAY BE SIZED TO ACCOMMODATE 150% GROWTH PER YEAR
<b>3. Exchange Requirements</b>						
<i>a. Collects PST files on client workstations</i>	M	X			A	ARCHIVE MANAGER CAN COLLECT PST FILES FROM CLIENT WORKSTATIONS
<i>b. Collects PST files on personal server file shares</i>	M	X			A	ARCHIVE MANAGER CAN COLLECT PST FILES FROM FILE SERVER SHARES
<i>c. Archive access integrated with client</i>	O	X			A	ARCHIVE MANAGER MAY BE INTEGRATED WITH THE OUTLOOK CLIENT ENABLING ACCESS TO THE ARCHIVE WITHOUT LEAVING OUTLOOK



FUNCTIONAL REQUIREMENTS	MANDATORY (M) OR OPTIONAL (O)	YES	YES WITH MODIFICATIONS	NO	REQ RESPONSE (A, B, C, D, E)	COMMENTS
<i>d. Archive access integrated with web client</i>	O	X			A	ARCHIVED DATA MAY BE ACCESSED VIA THE WEB CLIENT
<i>e. Collection of all incoming and outgoing emails (forced archiving)</i>	M	X			A	USING EITHER EXCHNAGE JOURNALING OR THE ARCHIVE MANAGER ESM WE CAN CAPTURE ALL MESSAGES PROCESSED BY THE MAIL SERVER. JOURNALING WILL GUARANTEE 100% MESSAGE CAPTURE FOR COMPLIANCE PURPOSES.
<i>f. Prevent deletion of archived mail by user</i>	M	X			A	USERS ARE UNABLE TO DELETE ARCHIVED MAIL. DELETION IS AN ADMINISTRATIVE FUNCTION PERFORMED VIA THE RETENTION POLICY EDITOR
<b>4. GroupWise Requirements</b>						
<i>a. Collects archives on client workstations</i>	M	X			A	ARCHIVE MANAGER CAN COLLECT ARCHIVE FILES FROM CLIENT WORKSTATIONS The GroupWise Archive Importer Tool helps GroupWise customers import GroupWise archives into Archive Manager. The product merges email back into users' mailboxes in Archive Manager; it does not create a separate mailbox object for the archive.
<i>b. Collects archives on personal server file shares</i>	M	X			A	ARCHIVE MANAGER CAN COLLECT ARCHIVE FILES FROM FILE SERVER SHARES AS ABOVE IN 4A



FUNCTIONAL REQUIREMENTS	MANDATORY (M) OR OPTIONAL (O)	YES	YES WITH MODIFICATIONS	NO	REQ RESPONSE (A, B, C, D, E)	COMMENTS
<i>c. Archive access integrated with client</i>	<b>O</b>			<b>X</b>	<b>E</b>	ARCHIVED MESSAGES THAT ARE STUBBED CAN BE SEAMLESSLY ACCESSED FROM THE ARCHIVE IN NATIVE OUTLOOK. OTHER MAIL CLIENTS SUCH AS OWA OR ENTOURAGE PROVIDE "1-CLICK" ACCESS TO THE ARCHIVE. THE ARCHIVE MANAGER UI CAN ALSO BE ACCESSED FROM WITHIN OUTLOOK BY CLICKING A FOLDER WITHIN THE MAILBOX FOLDER STRUCTURE
<i>d. Archive access integrated with web client</i>	<b>O</b>			<b>X</b>	<b>E</b>	ARCHIVE MANAGER PROVIDES ITS OWN WEB CLIENT WHICH CAN BE ACCESSED AS A FOLDER WITHIN THE OUTLOOK CLIENT, AS A LINK, SHORTCUT, OR FAVORITE
<i>e. Collection of all incoming and outgoing emails (forced archiving)</i>	<b>M</b>	<b>X</b>			<b>A</b>	USING JOURNALING, ALL EMAIL TRAFFIC IS CAPTURED AS IT IS PROCESSED BY THE MAIL SERVER
<i>f. Prevent deletion of archived mail by user</i>	<b>M</b>	<b>X</b>			<b>A</b>	USERS ARE UNABLE TO DELETE ARCHIVED MAIL. DELETION IS AN ADMINISTRATIVE FUNCTION PERFORMED VIA THE RETENTION POLICY EDITOR
<b>5. Other Requirements</b>						
<i>a. Access to archive based on group and user security</i>	<b>M</b>	<b>X</b>			<b>A</b>	ARCHIVE MANAGER IS DIRECTORY INTEGRATED. SECURITY MAY BE SET BY USER, GROUP OR OU (AD)
<i>b. Ability for end user to retrieve archived</i>	<b>M</b>	<b>X</b>			<b>A</b>	USERS MAY BE GRANTED ACCESS TO THEIR ARCHIVED MAIL AND DELEGATED



FUNCTIONAL REQUIREMENTS	MANDATORY (M) OR OPTIONAL (O)	YES	YES WITH MODIFICATIONS	NO	REQ RESPONSE (A, B, C, D, E)	COMMENTS
						ACCESS TO OTHERS AS NEEDED
<i>c. Ability for end user to mail and reply/forward of retrieved archive as with normal mail</i>	<b>O</b>	<b>X</b>			<b>A</b>	ARCHIVED MAIL IS LIVE DATA AND USERS MAY VIEW, REPLY, REPLY-TO-ALL, FORWARD AND PRINT ARCHIVED MAIL
<i>d. Ability to limit amount of archive exposed to end user</i>	<b>M</b>	<b>X</b>			<b>A</b>	USERS MAY BE GRANTED ACCESS TO THEIR ARCHIVED MAIL AND DELEGATED ACCESS TO OTHERS AS NEEDED
<i>e. Ability for end user to customize archive view</i>	<b>O</b>					USERS MAY USE "CUSTOM AND VIRTUAL MAILBOXES" FOR ACCESSING AND SHARING ARCHIVED DATA
<i>f. Business filters to determine what archives will be stored and how long</i>	<b>M</b>	<b>X</b>			<b>A</b>	<p>The Archive Manager Retention Policy Editor lets you specify a retention period for the archived messages using retention rules, or policies and to temporarily stop deleting expired messages during investigations.</p> <p>The administrator can define how long the messages in the archive are to be retained using the Keep Policy.</p> <p>Any and all messages that reach or exceed the thresholds of the Keep policies can be removed from the system using the Delete Policy.</p> <p>The Legal Hold feature can be activated to temporarily suspend the retention capabilities in the event of litigation or</p>



FUNCTIONAL REQUIREMENTS	MANDATORY (M) OR OPTIONAL (O)	YES	YES WITH MODIFICATIONS	NO	REQ RESPONSE (A, B, C, D, E)	COMMENTS
						investigation. These policies can be set based on Time, Mailbox, Mail Store, Group, OU, Search Term (i.e. Key Word, Phrase, Proximity, etc.), Tag and Tag Value.
<i>g. Business filters for archives on a per group and user basis</i>	<b>M</b>	<b>X</b>			<b>A</b>	MAIL CAPTURE MAY BE CONFIGURED ON A USER, GROUP OR OU (AD) BASIS
<i>h. Provides a method of offline access for end user archives</i>	<b>O</b>	<b>X</b>			<b>A</b>	The Offline Client may be deployed to allow users to cache their archives and access them when offline.
<i>i. Needs to provide a browser interface for archive access</i>	<b>M</b>	<b>X</b>			<b>A</b>	A full-featured web-based user interface is provided that lets end users search their email, and allows privileged users to share information, access other users' mailboxes and administer the system



**Appendix B**  
TECHNICAL REQUIREMENTS

TECHNICAL REQUIREMENTS	MANDATORY (M) OR OPTIONAL (O)	YES	YES WITH MODIFICATIONS	NO	REQ RESPONSE (A, B, C, D, E)	COMMENTS
<b>1. System Architecture</b>						
a. The application must integrate with GroupWise and Exchange	M	X			A	ARCHIVE MANAGER SUPPORTS MICROSOFT EXCHANGE AND NOVELL GROUPWISE. SEE ATTACHED DATA SHEETS FOR ADDITIONAL INFORMATION
b. The system places no limit on the number of emails or archive size.	M	X			A	NO LIMITS ARE PLACED ON THE NUMBER OF EMAILS OR ARCHIVE SIZE
c. The system server is compatible with the State's technical architecture and is sized suitable for the system specified.	M	X			A	THE ARCHIVE MANAGER SOLUTION USES STANDARD MICROSOFT TECHNOLOGIES AND MAY BE SIZED ACCORDING TO REQUIREMENTS. AS SUCH IT MEETS THE STATE'S
d. The system is fully self-contained and capable of being operated by State staff with no dependency on Contractor services for its routine operation.	M	X			A	ARCHIVE MANAGER IS A "LOCAL" SOLUTION WITH NO OUTSIDE DEPENDENCIES FOR ROUTINE OPERATION
e. The application must provide an end user client interface for personal archive access.	M	X			A	Archive Manager provides a full-featured web-based user interface is provided that lets end users search their email, and allows permitted



TECHNICAL REQUIREMENTS	MANDATORY (M) OR OPTIONAL (O)	YES	YES WITH MODIFICATIONS	NO	REQ RESPONSE (A, B, C, D, E)	COMMENTS
						users to share information, access other users' mailboxes and administer the system.
f. The application must provide an interface for archive searches and provide a method of reporting based on these searches.	<b>M</b>	<b>X</b>			<b>A</b>	<b>ARCHIVE MANAGER PROVIDES A WEB INTERFACE FOR VIEWING AND SEARCHING ARCHIVED MAIL. EACH MESSAGE VIEWED AND SEARCH PERFORMED IS RECORDED AND MAY BE RE-PLAYED</b>
g. The application must provide a method for archive searches that allows archive extraction based on current industry standard E-Discovery methodologies. (Archived email must be kept in a legally unmodified form)	<b>M</b>	<b>X</b>			<b>A</b>	<b>ARCHIVE SEARCH RESULTS MAY BE EXPORTED (COPIED) FROM THE ARCHIVE IN THE FOLLOWING FORMATS: PST, HTML, XML AND MIME</b>
h. The system keeps a log of each transaction which alters the database. Logs are date and time stamped to allow the system to reconstruct activity for any period.	<b>M</b>	<b>X</b>			<b>A</b>	<b>THE DATABASE KEEPS A LOG OF CHANGES AND REPORTS ON A NUMBER OF ACTIONS OUT OF THE BOX, INCLUDING MESSAGE ACCESS, SEARCHES PERFORMED, VIEWED MESSAGES, QUESTIONABLE ACCESS, AMONG OTHERS. CUSTOMIZED</b>



TECHNICAL REQUIREMENTS	MANDATORY (M) OR OPTIONAL (O)	YES	YES WITH MODIFICATIONS	NO	REQ RESPONSE (A, B, C, D, E)	COMMENTS
						REPORTS CAN BE GENERATED UTILIZING A 3 <sup>RD</sup> PARTY PRODUCT SUCH AS CRYSTAL REPORTS.
i. The application de-duplicates mail for storage efficiencies	O	X			A	<p><b>ARCHIVE MANAGER HASHES BOTH MESSAGES AND ATTACHMENTS</b></p> <p>The “fingerprints” generated are unique, and are used to determine if the message or attachments have been processed previously. If the message has not been previously processed, it is stored in Archive Manager; if it has been processed, it is ignored. As a result, Archive Manager will only store a single copy of any message or any attachment regardless of the number of unique messages an attachment appears on.</p>
j. The application stores attachments as well as complete email bodies	M	X			A	Once Archive Manager has determined it needs to store a message and any attachments, the application separates the



TECHNICAL REQUIREMENTS	MANDATORY (M) OR OPTIONAL (O)	YES	YES WITH MODIFICATIONS	NO	REQ RESPONSE (A, B, C, D, E)	COMMENTS
						message into its constituent parts; the message body and all associated metadata (including the message subject, to, from, time, date) into a Microsoft SQL Server database, while the attachments are stored in a standard file store.
<b>2. Security / Access Control</b>						
a. The system provides security at database, workstation, and individual operator levels.	<b>M</b>	<b>X</b>			<b>A</b>	<b>ARCHIVE MANAGER PROVIDES SECURITY WITHIN ITS APPLICATION FOR ITS SYSTEMS AND USER/OPERATOR ACCESS. PHYSICAL WORKSTATION SECURITY MAY BE ADDRESS WITH DOMAIN OR LOCAL SECURITY POLICIES</b>
b. The system provides secure access control based upon unique user login, for types of record (e.g., agency, subject) as well as by function performed upon the record (e.g., Display, Add, Edit, Delete.)	<b>O</b>	<b>X</b>			<b>A</b>	<b>ARCHIVE MANAGER HAS ROLE-BASED SECURITY THAT ALLOWS SPECIFIC USERS TO HAVE ACCESS AND/OR FUNCTIONALITY (I.E. CREATE AND APPLY TAGS) BEYOND THAT OF OTHER USERS</b>



TECHNICAL REQUIREMENTS	MANDATORY (M) OR OPTIONAL (O)	YES	YES WITH MODIFICATIONS	NO	REQ RESPONSE (A, B, C, D, E)	COMMENTS
c. The system checks each user's access privileges at login, and automatically disable or enables client functions (in real time) based upon the user's profile	<b>M</b>	<b>X</b>			<b>A</b>	<b>ARCHIVE MANAGER SECURITY IS MANAGED LOCALLY AND IS DIRECTORY INTEGRATED. THE SYSTEM CHECKS USER ACCESS RIGHTS AT LOGIN TO THE ARCHIVE. IF THE USER'S DIRECTORY ACCOUNT IS ENABLED OR DISABLED, THEY WILL BE GRANTED DEFAULT ACCESS (OR THEIR ACCESS REVOKED) AUTOMATICALLY</b>
d. The system provides varying levels of access within the application, such as administrators or view only.	<b>M</b>	<b>X</b>			<b>A</b>	<b>ARCHIVE MANAGER PROVIDES GRANULAR SECURITY ROLES WHICH MAY BE CUSTOMIZED BASED ON REQUIRED LEVEL OF ACCESS</b>
e. The application provides a method of tamper protection on archived mail	<b>M</b>	<b>X</b>			<b>A</b>	Messages are protected in a tamper-proof store. Users are unable to modify messages and attachments once in the Archive Manager system, ensuring an accurate record of all content is maintained.
f. Encryption of email archive	<b>O</b>			<b>X</b>	<b>E</b>	<b>ARCHIVE MANAGER</b>



TECHNICAL REQUIREMENTS	MANDATORY (M) OR OPTIONAL (O)	YES	YES WITH MODIFICATIONS	NO	REQ RESPONSE (A, B, C, D, E)	COMMENTS
						OBFUSCATES BUT NOT PROVIDE FULL ENCRYPTION OF THE DATABASE, ENCRYPTION IS BEING CONSIDERED FOR A FUTURE RELEASE
<b>3. Security/Password Controls</b>						
a. The application authenticates to Active Directory for security control	O	X			A	Archive Manager utilizes the same security model used within the organization, enforcing security and reducing the need to administer multiple sets of logins. Archive Manager synchronizes user and group information with the directory service used within the organization, including Microsoft Active Directory and Novell eDirectory.
b. The application authenticates to Active Directory for Exchange integration	M	X			A	ARCHIVE MANAGER USES ACTIVE DIRECTORY AUTHENTICATION FOR EXCHANGE INTEGRATION
c. The application authenticates to eDirectory for GroupWise integration	M	X			A	ARCHIVE MANAGER USES EDIRECTORY AUTHENTICATION FOR GROUPWISE



TECHNICAL REQUIREMENTS	MANDATORY (M) OR OPTIONAL (O)	YES	YES WITH MODIFICATIONS	NO	REQ RESPONSE (A, B, C, D, E)	COMMENTS
						INTEGRATION
<b>4. Security/Activity Logging</b>						
a. The system logs authorized and unauthorized access attempts by date, time, user ID	M			X	B	THIS WILL BE OFFERED IN A FUTURE RELEASE OF ARCHIVE MGR. QUEST'S CHANGE AUDITOR FOR EXCHANGE TOOL CAN LOG AUTHORIZED ACCESS ATTEMPTS.
b. The system maintains an audit trail of all security maintenance performed by date, time, user ID and location, with easy access to information.	M			X	B	THIS WILL BE OFFERED IN A FUTURE RELEASE OF ARCHIVE MGR. BUT CAN CURRENTLY BE HANDLED BY USING QUEST'S CHANGE AUDITOR FOR EXCHANGE TOOL.
c. Provides security reports of users and access levels.	M	X			A	THE MESSAGESTATS ARCHIVE MAILBOX SECURITY ROLES REPORT LISTS THE USERS MAILBOX DISPLAY NAME, LOGIN NAME, ARCHIVE MANAGER MAILBOX TYPE, ASSOCIATED SECURITY ROLE AND OU
d. Provides detailed reports of backups completed and backups failed.	O			X	E	ARCHIVE MANAGER LEVERAGES STANDARD OR 3 <sup>RD</sup> PARTY WINDOWS OS, FILE SYSTEM AND MSSQL SERVER BACKUPS. LOGGING IS



TECHNICAL REQUIREMENTS	MANDATORY (M) OR OPTIONAL (O)	YES	YES WITH MODIFICATIONS	NO	REQ RESPONSE (A, B, C, D, E)	COMMENTS
						PROVIDED BY YOUR CHOSEN BACKUP SOLUTION
<b>5. Misc Specifications</b>						
a. The software uses a relational database management system as defined as a standard within the State of Michigan's enterprise environment	M	X			A	ARCHIVE MANAGER USE MICROSOFT SQL SERVER 2005
b. The software will operate effectively on State hardware as defined as a standard within the State of Michigan's enterprise environment	M	X			A	THE ARCHIVE MANAGER APPLICATION USES STANDARD 32-BIT "WINTEL" HARDWARE
c. The software utilizes an operating system as defined as a standard within the State of Michigan's enterprise environment	M	X			A	ARCHIVE MANAGER USES THE MICROSOFT WINDOWS SERVER 2003 OPERATING SYSTEM
<b>6. Reporting</b>						
a. The system includes ad-hoc query and reporting tools.	M	X			A	MESSAGESTATS PROVIDES ROBUST REPORTING FOR ARCHIVE MANAGER, EXCHANGE AND BLACKBERRY
b. The online query capability enables non-technical end-users to extract information.	M	X			A	MESSAGESTATS IS INTUITIVE, WEB BASED AND CAN AUTOMATICALLY DELIVER REPORTS ON A SCHEDULED BASIS
<b>7. Capacity / Scalability</b>						
a. The system should be able to support 1.5x the peak number of concurrent users in the current system in order to provide sufficient capacity for growth.		X			A	THE ARCHIVE MANAGER SOLUTION MAY BE SIZED TO MEET THIS REQUIREMENT.
<b>8. Error Handling</b>						



TECHNICAL REQUIREMENTS	MANDATORY (M) OR OPTIONAL (O)	YES	YES WITH MODIFICATIONS	NO	REQ RESPONSE (A, B, C, D, E)	COMMENTS
a. The system must ensure that all errors are written to an error log.	M	X			A	ARCHIVE MANAGER WRITES TO THE WINDOWS LOGS AND ITS OWN LOGS
b. The system must allow for an administrator to view, filter, sort, and search the error log.	M	X			A	LOGS MAY BE SEARCHED/SORTED USING THE WINDOWS EVENT VIEWER OF A COMMON TEXT EDITOR
c. The system must allow for an alert message to be defined that can be executed upon the occurrence of an error.	M	X			A	ARCHIVE MANAGER PROVIDES AN ALERT SERVICE THAT CAN GENERATE AN ALERT MESSAGE IF THE ALERT CRITERIA IS MET
<b>9. Backup and Recovery</b>						
a. The system has the ability to provide point-in-time recovery of data to the last completed transaction.	O		X		C	ARCHIVE MANAGER IS PART OF A SUITE THAT INCLUDES RECOVERY MANAGER FOR EXCHANGE WHICH PROVIDES THIS CAPABILITY
b. The system has the ability to allow for continued use of the system during backup.	M	X			A	THE SYSTEM WILL CONTINUE TO FUNCTION DURING BACKUPS PROVIDED THE BACKUP DOES NOT TAKE ANY SUPPORTING COMPONENTS OFFLINE DURING THE BACKUP. SHOULD THE ARCHIVE BECOME UNAVAILABLE, NEW MESSAGES WILL BE QUEUED AND PROCESSED



TECHNICAL REQUIREMENTS	MANDATORY (M) OR OPTIONAL (O)	YES	YES WITH MODIFICATIONS	NO	REQ RESPONSE (A, B, C, D, E)	COMMENTS
						WHEN THE ARCHIVE RESUMES OPERATION
c. The system will interface and utilize SOM backup and recovery options standards	M	X			A	ARCHIVE MANAGER LEVERAGES STANDARD OR 3 <sup>RD</sup> PARTY WINDOWS OS, FILE SYSTEM AND MSSQL SERVER BACKUPS.
<b>10. Redundancy and Availability</b>						
a. The system must be able to be located in at least two separate locations for redundancy	M	X			A	ARCHIVE MANAGER BEING BASED ON STANDARD MICROSOFT TECHNOLOGIES CAN BE CONFIGURED IN AN OFFSITE DR SCENARIO UTILIZING SUCH PRODUCTS AS DOUBLETAKE AND NEVERFAIL AMONG OTHERS
b. The system must meet availability and fault tolerance for a 24 hour/day, 7 day/week operation with at a minimum a 99 percent uptime	M	X			A	ARCHIVE MANAGER IS RELIANT ON THE UNDERLYING SYSTEM, NETWORK AND STORAGE INFRASTRUCTURE FOR AVAILABILITY AND MAY BE CONFIGURED FOR HIGH AVAILABILITY BY USING STANDARD CLUSTERING TECHNOLOGY
c. The system should meet higher than a 99 percent availability	O	X			A	ARCHIVE MANAGER IS RELIANT ON THE UNDERLYING



TECHNICAL REQUIREMENTS	MANDATORY (M) OR OPTIONAL (O)	YES	YES WITH MODIFICATIONS	NO	REQ RESPONSE (A, B, C, D, E)	COMMENTS
						SYSTEM, NETWORK AND STORAGE INFRASTRUCTURE FOR AVAILABILITY AND MAY BE CONFIGURED FOR HIGH AVAILABILITY BY USING STANDARD CLUSTERING TECHNOLOGY
d. The system must be designed to have a scheduled downtime of less than 6 hours per month	<b>M</b>	<b>X</b>			<b>A</b>	ARCHIVE MANAGER IS RELIANT ON THE UNDERLYING SYSTEM, NETWORK AND STORAGE INFRASTRUCTURE FOR AVAILABILITY AND MAY BE CONFIGURED FOR HA I.E. CLUSTERING
e. The system must be designed to have an unscheduled downtime of 99 % availability: < 6 hours / month	<b>M</b>	<b>X</b>			<b>A</b>	ARCHIVE MANAGER IS RELIANT ON THE UNDERLYING SYSTEM, NETWORK AND STORAGE INFRASTRUCTURE FOR AVAILABILITY AND MAY BE CONFIGURED FOR HA I.E. CLUSTERING



**Appendix C**

Table 1: Summary of the Project Cost

No.	Project Cost(s)	Cost (\$)	Comments
A.	<b>General Requirements</b> Breakdown provided in Table 2	\$33,512.00	
B.	<b>Software</b> (includes COTS and any third party software) Give breakdown in Table 3	\$1,253,000.00	This is the total license cost if SOM would decide to purchase all options.
C.	<b>Implementation</b> Give breakdown in Table 2	\$96,303.00	There are additional tool that would require professional services. If the SOM is interested in purchasing the additional tools, the cost of implementing those tools would be determined by a scoping call. The services included in this response are for the implementation of Archive Mgr.
D.	<b>Training / Knowledge Transfer / Transition</b> Give breakdown in Table 4	\$30,304.00	
E.	<b>Documentation</b> Give breakdown in Table 4	\$0	
F.	<b>Software Support and Warranty</b> Give breakdown in Table 5	\$360,000.00	Pricing is based on Quest's Business Critical Support model for years two and three of the contract.
	<b>Total Project Cost</b>	<b>\$1,773,119.00</b>	



Appendix C

Table 2: New Application or Customization of COTS - Business Requirements, Design, Development and Implementation Costs – If cost is not applicable, indicate with N/A

No.	Category	Resources Required (Contractor to identify IT classification)	Total # of hours (Contractor to identify # of hours per resource)	Total cost (\$) (Contractor shall transfer category totals to Table 1)	Comments (Contractor shall provide a narrative to explain how they arrived at the costs identified)
A.	<p><b>Business Requirements</b> <i>(facilitated sessions, validation and verification of requirements)</i></p>		88	<b>\$19,206.00</b>	<p>Janalent's approach to staffing a project is fundamentally different than a classical consulting organization. On our projects we employ subject matter experts that have been involved with numerous deployments. This approach allows us to utilize fewer resources, with very deep subject matter expertise and provide our customers a cost effect solution in a timely manner.</p>



	<b>B. Design</b>		64		<p>Following our delivery methodology the project was divided into three key phases: Phase I - Assess: Analyze the current environment and Align the plan with the needs and unique business requirements of the enterprise. Phase II - Deliver: An accelerated but methodical Design, proof of concept, validation and documentation of the business and technology solution created by Janalent. Deployment of the solution, from pilot to production. Phase III - Enable: Education. We believe that no solution implementation is successful without educating administrators, line-of-business managers, and other interested parties in the design, deployment, and management best-practices of the solution so our client's project teams can take ownership without disruption or process breakdown. Evolution activities that will focus on continually enhancing and working with our clients on their</p>
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**\$14,306.00**



C.	Development			\$	
D.	Implementation			<p><b>Contractor shall provide individual implementation costs by category below and then transfer the combined total to Table 1 - F</b></p>	<p>Each phase was further broken down into the subcomponents to arrive at effort to complete the line item on the price sheet. For the consulting activities any and all reimbursable expenses have been included in the fixed price rate. The attached project timeline outlines the approximate time each of the technical phases will take to accomplish</p>
	<b>Data Conversion</b>		N/A	\$	
	<b>Data Migration</b>		N/A	\$	
	<b>Configuration</b>		Part of Installation	\$	
	<b>Installation</b>		272	<b>\$60,607.00</b>	
	<b>Testing:</b> (i.e. Unit, System, Integration, Performance (load and stress), Parallel Testing, User Acceptance Testing (UAT), and other)		160	<b>\$35,696.00</b>	<p>This occurs both during the lab testing and validation and during the pilot deployment.</p>
	<b>Interfaces/Integration</b>				
	<i>Outlook</i>		Part of Installation	\$	
	<i>GroupWise</i>		Part of Installation	\$	
<i>E-discovery</i>		Part of Training	\$		



	<b>Combined Total Implementation Costs</b> (data conversion, data migration, configuration, installation, testing and interfaces/integration)			<b>\$129,815.00</b>	
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**Table 3: Breakdown of Software Licenses – including COTS and Third Party Software Costs - If cost is not applicable, indicate with N/A**

No.	Software license(s) cost	Product Name and Version	Cost (\$)	Comments
<b>B.</b>	Commercial Off The Shelf (COTS)	Archive Mgr 4.1	\$525,000.00	Software License cost is based on 60,000 users/mailboxes per tool. Quest Software is including at no additional cost to SOM an additional 5,000 licenses per tool to allow for future growth. This brings the total number of licenses to 65,000 per tool.
	Report writers	N/A		
	Requirement analysis tools	N/A		
	Design tools	N/A		
	Drawing tools	N/A		
	Development environment tools	N/A		
	Testing tools: (such as issues tracking, defect testing, load/stress testing, configuration management (List and provide cost separately for each item) 1. 2. 3.	N/A		
	Other system utilities (such as backup and disaster recovery, etc.) 1. 2.	N/A		



Any other software (List):			
<b>1. Exchange Mgmt Suite</b>			
2. Quest Policy Authority	8.1	\$ 100,000.00	
3. MessageStats with Report Packs	6.6		
4. Recovery Mgr for Exchange	4.7		
5. Spotlight on Messaging	7.2		
6. e-Discovery Mgr	1.0		
7. Change Auditor for Exchange	4.8		
<b>8. Active Directory Mgmt Suite</b>	<b>6.0.1</b>	<b>\$ 400,000.00</b>	
9. ActiveRoles:Server	<b>7.9</b>		
10. Recovery Mgr for AD	<b>6.8</b>		
11. Spotlight on AD	<b>4.9</b>		
12. Directory Analyzer	<b>4.9.40</b>		
13. Directory Troubleshooter	<b>10.1</b>		
14. InTrust with Plug-ins	<b>3.2.4</b>		
15. Plug-in for Active Directory	<b>2.1</b>		
16. Plug-in for Exchange	<b>2.1.1</b>		
17. Plug-in for File	<b>3.2</b>		
18. Site Administrator for SharePoint	<b>2.7.8</b>		
19. Recovery Mgr for SharePoint	<b>5.0</b>		
20. Quest Webparts for SharePoint	<b>6.3</b>		
21. Quest Reporter		\$60,000.00	
		\$168,000.00	
22. NDS Migrator	4.3		
23. GroupWise Migrator	3.5.1.54		
<b>Total Cost of Software Licenses including COTS and Third Party Software</b>		<b>\$1,253,000.00</b>	

**Table 4: Breakdown of Training and Documentation Cost**

No.	Training and Documentation	Cost (\$)	Comments
<b>F.</b>	End User training	<b>\$30,304.00</b>	<b>Hands-on training for the technical team. Classroom training for the operations team and those responsible for policy and searches</b>
	End User documentation		
	Other (List):		<b>Included in training</b>
	Knowledge Transfer / Transition		<b>Included in training and from day 1 with the technical team</b>
	<b>Total Training and Documentation Cost</b>	<b>\$30,304.00</b>	

**Table 5: Recurring Costs: Software License and Maintenance and Support**

No.	Cost Categories	Software Cost (\$)	Comments
<b>G.</b>	<b>Software license cost</b>		Maintenance cost below is based on purchasing Archive Mgr plus all additional tools. If Archive Mgr is the only product purchased it would be 25%
	First Year	\$1,253,000.00	
	Second Year	\$0	



	Third Year	\$0	of purchase price for 24 x 7 support for year two and beyond.
	Fourth Year	\$0	
	Fifth Year	\$0	
	<b>Total Software License Recurring Costs</b>	\$	
	<b>Software Maintenance and Support cost (may includes helpdesk)</b>		Year one is included at no cost. 24x7 support service offered as a requirement of this RFP which is an additional cost as an extension to Standard support (which is restricted to local business hours only). Business Critical Support provides full 24x7 support coverage to customers 365 days a year. Standard Maintenance renewal is 20% of purchase price for year 2 and year 3 and beyond is 20% of purchase price with a maximum uplift of 10% per year until which time that it equals 20% of list price. Business Critical support is 25% of purchase price.
	First Year	\$0	
	Second Year	\$180,000	
	Third Year	\$180,000	
	Fourth Year		
	Fifth Year		
	<b>Total Software and Hardware Maintenance and Support Recurring Costs</b>	<b>\$360,000.00</b>	
	<b>Combined Total</b>	<b>\$1,773,119.00</b>	

Funding for the fourth and fifth year of maintenance are not included in the final cost of this contract. Final cost is \$1,773,119.00.

Maintenance and Support cost for year four and five is \$180,000.00 per year.



**Appendix D**

<b>Enterprise Architecture Solution Assessment</b>	
<b>Contact Info &amp; Purpose (Contractor version)</b>	
<p>The purpose of the EA Solution Assessment is to document architectural details of proposed IT solutions in order to determine compatibility with the overall SOM architecture. MDIT/SOM activities which require an Assessment include: the purchase of new licenses, contracting for development services, purchase of new software components, installation of new software components, the purchase of new hardware components or the use of MDIT staff resources on any project beyond the design phase. All Contractor proposals and new contracts must be accompanied by an Assessment, documenting the architectural details of the proposed solution.</p>	
<b>Contractor Version 2.04v</b>	
<b>Solution/Project Name</b>	Email Archive Solution
<b>RFP Name/Number</b>	07119200196
<b>Date Submitted</b>	06/16/2009
<b>Contractor Name</b>	DLT Solutions
<b>Contractor City and State</b>	Herndon, VA
<b>Contractor Phone No.</b>	
<b>Contractor eMail</b>	<a href="mailto:Kavya.Reddy@dlt.com">Kavya.Reddy@dlt.com</a>
<p><b>A brief description of the proposed solution and business purpose/process.</b> <i>(please keep the description brief)</i></p>	<p>&lt;to be completed by SOM prior to inclusion in RFP&gt;</p>
<p><b>Additional description of the solution and business purpose.</b> <i>(please expand the row as much as needed)</i></p>	<p>The Quest / Janalent Email archiving &amp; migration solution is an integrated email archiving and compliance solution focused on providing a robust, secure, and affordable way to transition from GroupWise to Microsoft Exchange while not having to provide two separate solutions for the GroupWise and Exchange environments. The Archive Manager solution will provide SOM the ability to pragmatically and programmatically archive user mail data from the GroupWise environment and still have access to those archives post migration. The solution will provide a single-investment solution that will grow and scale with SOM’s messaging and compliance needs.</p> <p>As part of the solution, Quest has partnered with its public sector service provider, Janalent, to provide the consulting and implementation expertise on the planning, design, implementation, knowledge transfer, and management of the Archive Manager solution for the state. This implementation will be focused on the robust architecture of an email archiving solution coupled with effective end-user and administrator knowledge transfer and training. We are excited to work with the State and look forward to the opportunity to be of service.</p>



Select all that apply ✓	Enterprise Architecture Solution Assessment	
	Architecture Overview (Contractor version)	
	<i>Bidder: please provide a response to each technology category</i>	
<b>1</b>	<b>Hosting</b>	<b>Comments</b>
x	Internally Hosted	All components are hosted by State of MI
	Externally Hosted	
	Internally & Externally Hosted	
	N/A (Not Applicable)	
<b>2</b>	<b>User Interface Type</b>	<b>Comments</b>
x	Browser	
	Client	
	Mobile Browser	
	Mobile Client	
	Terminal	
x	Other	Can be accessed through a browser or Outlook Client
	N/A (Not Applicable)	
<b>3</b>	<b>System Interface Type</b>	<b>Comments</b>
	EDI	
	Flat File	
x	Web Service	
	XML	
	Other	
	N/A (Not Applicable)	
<b>4</b>	<b>Type of System Integration</b>	<b>Comments</b>
x	Internal	
	External	
	Both Internal & External	
	N/A (Not Applicable)	
<b>5</b>	<b>Method of Access</b>	<b>Comments</b>
x	Internet	If made available through firewall
x	Intranet	
	LG Net	
	Public facing internet	
	UT Net	
	ContractorNet	
	VPN	
x	Other	Through Outlook client or Intranet
	N/A (Not Applicable)	
(continued)		



Select all that apply ✓	Enterprise Architecture Solution Assessment	
	Architecture Overview (continued)	
	<i>Bidder: please provide a response to each technology category</i>	
<b>9</b>	<b>Database Modeling Tools</b>	<b>Comments</b>
	Rational Rose Data Model 7.0 (standard)	
	Erwin 7.0 (standard)	
	Oracle Designer 10g (standard)	
	Toad 8.x (standard)	
	Toad 9.0 (standard)	
	Other (Explain)	
X	N/A (Not Applicable)	
<b>10</b>	<b>Development Platform</b>	<b>Comments</b>
X	.Net (standard)	
	Java J2EE (standard)	
	Oracle (standard)	
	Other (Explain)	
	N/A (Not Applicable)	
<b>11</b>	<b>Presentation (Web) Server</b>	<b>Comments</b>
	Apache HTTPD 2.2.x (standard)	
	Citrix 4.0 (standard)	
	IBM IHS 6.0 (standard)	
	IBM IHS 6.1 (standard)	
X	Microsoft IIS 6.0 (standard)	
	Sun ONE Web Server (standard)	
	Other (Explain)	
	N/A (Not Applicable)	
<b>12</b>	<b>Application Server</b>	<b>Comments</b>
	IBM WebSphere 6.0 (standard)	
	IBM WebSphere 6.1 (standard)	
	JBoss 4.0.x (standard)	
X	Microsoft IIS 6.0 (standard)	
	Other (Explain)	
	N/A (Not Applicable)	
<b>13</b>	<b>HW Platform</b>	<b>Comments</b>
	Dell (standard)	
	HP (standard)	
	IBM AIX (standard)	
	Sun (standard)	
X	Other (Explain)	Can be implemented on any x86 hardware per deployment plan.
	X86 Virtualization (VCoE) (standard)	
	N/A (Not Applicable)	

(continued)



Select all that apply ✓	Enterprise Architecture Solution Assessment	
	Architecture Overview (continued)	
	<i>Bidder: please provide a response to each technology category</i>	
<b>14</b>	<b>Server OS</b>	<b>Comments</b>
	AIX 5.3 (standard)	
	HPUX 11i (standard)	
	HPUX 11i v2 (standard)	
X	Microsoft Windows 2003 (standard)	
	Novell Netware 6.5 (standard)	
	Redhat Linux Enterprise Server 3.0 (standard)	
	Sun Solaris 10 (standard)	
	Sun Solaris 9 (standard)	
	Suse Linux Enterprise 10 (standard)	
	Other (Explain)	
	N/A (Not Applicable)	
<b>15</b>	<b>CRM</b>	<b>Comments</b>
	Siebel (standard)	
	Other (Explain)	
X	N/A (Not Applicable)	
<b>16</b>	<b>Document Management</b>	<b>Comments</b>
	Filenet (standard)	
	Vignette Application Portal (standard)	
	Vignette V7 (standard)	
	Other (Explain)	
X	N/A (Not Applicable)	
<b>17</b>	<b>Centralized Printing</b>	<b>Comments</b>
	DMB consolidated print center (standard)	
	Other (Explain)	
X	N/A (Not Applicable)	
<b>18</b>	<b>Fax Server</b>	<b>Comments</b>
	GW Fax	
	Other (Explain)	
X	N/A (Not Applicable)	
<b>19</b>	<b>Testing Tools</b>	<b>Comments</b>
	Compuware Vantageview 8.5 (standard)	
	Mercury Quality Center 8.2 (standard)	
	Rational Suite 7 (standard)	
	Other (Explain)	
X	N/A (Not Applicable)	

(continued)



Select all that apply ✓	Enterprise Architecture Solution Assessment	
	Architecture Overview (continued)	
	<i>Bidder: please provide a response to each technology category</i>	
<b>20</b>	<b>Identity Management</b>	<b>Comments</b>
X	Active Directory 2003 (standard)	
	e-Dir 8.7.3.9 (standard)	
	Tivoli Access Manager v4.1 (standard)	
	Tivoli Identity manager 4.5.1 (standard)	
	Other (Explain)	
	N/A (Not Applicable)	
<b>21</b>	<b>Project Management</b>	<b>Comments</b>
	Clarity 8 (standard)	
	MS Project 2003 (standard)	
	Rational 7.0 (standard)	
	Niku 6 (standard)	
	Other (Explain)	
X	N/A (Not Applicable)	
<b>22</b>	<b>Requirements Gathering</b>	<b>Comments</b>
	Rational Requisite Pro 7.0 (standard)	
	Serena RTM 5.6 (standard)	
	MS Office (XP/2003) including Visio (standard)	
	SUITE/SEM templates	
	Other (Explain)	
X	N/A (Not Applicable)	
<b>23</b>	<b>Design Tools</b>	<b>Comments</b>
	Rational Rose 7.0 (standard)	
	Visio 2003 (standard)	
	Other (Explain)	
X	N/A (Not Applicable)	
<b>24</b>	<b>Version Control</b>	<b>Comments</b>
	Rational Clear Case 7 (standard)	
	Subversion 1.4 (standard)	
	Other (Explain)	
X	N/A (Not Applicable)	
<b>25</b>	<b>Message Queuing</b>	<b>Comments</b>
	Websphere MQ 6.x (standard)	
	Other (Explain)	
X	N/A (Not Applicable)	

(continued)



Select all that apply ✓	Enterprise Architecture Solution Assessment	
	Architecture Overview (continued)	
	<i>Bidder: please provide a response to each technology category</i>	
<b>26</b>	<b>Business Integration</b>	<b>Comments</b>
	BizTalk 2006 (standard)	
	Websphere Message Broker 6.0 (standard)	
x	Other (Explain)	Open API available for LOB applications
	N/A (Not Applicable)	
<b>27</b>	<b>Database Tools</b>	<b>Comments</b>
X	MS SQL Server Enterprise Manager (standard)	
	Oracle Enterprise Manager 10g (standard)	
	Teradata Utilities 5380 (standard)	
	Teradata Utilities 5450 (standard)	
	Toad 8.x (standard)	
	Toad 9.0 (standard)	
	Other (Explain)	
	N/A (Not Applicable)	
<b>28</b>	<b>Reporting Tools</b>	<b>Comments</b>
	ActivePDF (standard)	
	ActiveReports 1.0 (standard)	
	ActiveReports 2.0 (standard)	
	Crystal Reports 10 (standard)	
	Crystal Reports 11 (standard)	
	Jasper Reports (standard)	
	MS SQL 2005 Reporting Services (standard)	
	Oracle Reports 10g (standard)	
x	Other (Explain)	Quest Messagestats
	N/A (Not Applicable)	
<b>29</b>	<b>End-User Tools</b>	<b>Comments</b>
	Business Objects (BO) 10 (standard)	
	Business Objects (BO) 11 (standard)	
	Oracle Discoverer 10g (standard)	
	Other (Explain)	
X	N/A (Not Applicable)	
<b>30</b>	<b>Deployment Tools</b>	<b>Comments</b>
	Serena Mover (standard)	
	Microsoft Visual Studio (standard)	
	Other (Explain)	
X	N/A (Not Applicable)	

(continued)



Select all that apply ✓	Enterprise Architecture Solution Assessment	
	Architecture Overview (continued)	
	<i>Bidder: please provide a response to each technology category</i>	
<b>31</b>	<b>Build Tools</b>	<b>Comments</b>
	Apache Ant 1.7 (standard)	
	Serena Changeman Builder (standard)	
	MS Visual Studio (standard)	
	Other (Explain)	
X	N/A (Not Applicable)	
<b>32</b>	<b>Job Schedulers</b>	<b>Comments</b>
	Tidal Enterprise Scheduler 3.0 (standard)	
	OpCon XPS ver 3.31.02 (standard)	
	BL/Sched ver 5.0 (standard)	
	ECS ver 5.5 (standard)	
	HAPS ver 1.7 (standard)	
	Zeke ver 5.3.1 (standard)	
	Other (Explain)	
X	N/A (Not Applicable)	
<b>33</b>	<b>GIS Technologies</b>	<b>Comments</b>
	ArcIMS (standard)	
	ArcGIS Server 9.2 (standard)	
	ArcGIS Engine (standard)	
	ArcSDE (standard)	
	Other (Explain)	
X	N/A (Not Applicable)	
<b>34</b>	<b>Centers of Excellence Services</b>	<b>Comments</b>
	Address Verification Service (standard)	
	Business Objects Reporting Service (standard)	
	Citrix Application Delivery (standard)	
	Extract Transform Load (ETL) (standard)	
X	N/A (Not Applicable)	



**Enterprise Architecture Solution Assessment**

**Disaster Planning (Section to be completed by SOM)**

<b>Business continuity requirements.</b>	<b>Describe below</b>
<b>The business requirement(s) that determine the amount of time and the operational availability of the application to the end-user.</b>	<to be completed by SOM prior to inclusion in RFP>

**Select Only One (1)** *Availability Requirement Category – Availability Requirement is divided into three different levels. These levels define the continuous service availability requirements of the application. Based on the following definitions, please indicate the level of availability required for this Business Function / Application.*

<SOM> ***Urgent** - Business Function / Application outage has potential to cause loss of life or risk of injury to a citizen. 99.99% availability (<45 minutes of downtime / month). If an Urgent priority application is not available, DIT will work to resolve the incident 7 x 24 x 365. If the incident occurs after normal business hours, on-call staff (where available) will be called in to resolve the incident. DIT staff will continue to work the issue during and after business hours until the incident is resolved, and the application service restored.*

<SOM> ***High** – Business Function / Application outage will have a high non-life threatening impact on the public. If this application is not available, there may be an adverse impact on a large number of business clients who use the application. The lack of application availability may also be considered politically sensitive. 99.5% availability (<3.5 hours of downtime / month). DIT will work to resolve the incident 7 x 24 x 365. If the incident occurs after normal business hours, on-call staff (where available) will be called in to resolve the incident. DIT staff will continue to work the issue during and after business hours until the incident is resolved, and the application service restored.*

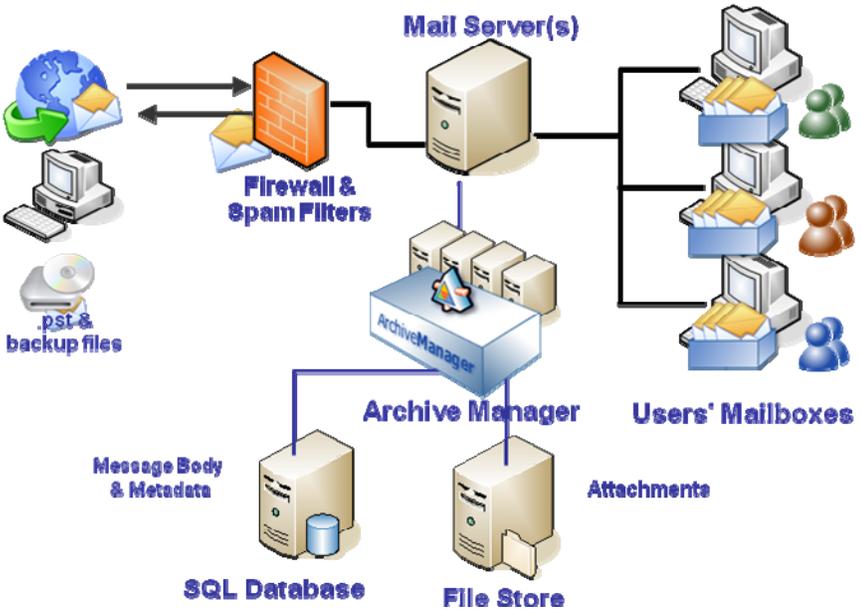
<SOM> ***Medium** – Business Function / Application not meeting the Urgent or High criteria will be assigned Medium priority status; this default will be considered the third priority and reflect a situation where there is no risk of personal injury, and the public is not being directly effected. 98% availability (<15 hours of downtime / month). If there is an issue with a medium priority application, work to resolve the incident will be handled during normal DIT Business hours (typically 8:00 am-5:00 pm, Monday-Friday. If the problem is not resolved at the end of the business day, staff will return to work the next business day, and continue the resolution process until the service is restored*

**Recovery Point and Time Objectives**

<b>Select Only One (1)</b>	<b>Recovery Point Objective (RPO) is the maximum amount of data loss a business function can sustain during an event.</b>		<b>Select Only One (1)</b>	<b>Recovery Time Objective (RTO) is the maximum amount of time that can elapse until a system / application / function must be returned to service.</b>
	2 hours			2 hours
<SOM>	4 hours		<SOM>	4 hours
	6 hours			6 hours
	8 hours			8 hours
	24 hours			24 hours
	72 hours			72 hours
	Other (Explain)			Other (Explain)
	N/A (Not Applicable)			N/A (Not Applicable)



# Archive Manager Conceptual Diagram



- Multiple Instance
  - Several Front-Ends
  - Allows for HA
- DNA Fingerprint
  - Single instanceng
  - Tamperproof
  - "Flight data recorder"
  - "Unique ID" for integration
- Management
  - Storage consolidation
  - Easy to back Up
  - Improved virus protection
  - Business driven archiving
- Enhanced Business Continuity
  - Separate from mail server
  - Transaction-Log shipping
- Platform
  - Enterprise search
  - EDMS "safety net"
  - "Email enable" applications



**Attachment A**  
Payment Table

Milestone	Invoice Amount
COTS Software Delivery	\$1,253,000.00
Assessment – Business Requirements Review	\$17,285.40
Archive Manager Design	\$12,875.40
Testing Completed (UAT)	\$32,126.40
Implementation 1,000 GroupWise mailboxes Archived	\$27,276.20
Implementation 1,000 Exchange Mailboxes Archived	\$27,270.00
Training Completed	\$27,273.60
Final Acceptance - 10%	\$16,012.00
Services Total Cost	\$160,119.00
Maintenance yrs two and three	\$360,000.00
<b>Total Cost</b>	<b>\$1,773,119.00</b>

No.	Cost Categories	Maintenance and Support Cost (\$)	Comments
F.	<b>Software Maintenance and Support cost</b> <i>(includes helpdesk)</i>		Year one is included at no cost, year two and three included in initial contract. This will include Business Critical support.
	First Year	\$0	
	Second Year	Included in initial contract	
	Third Year	Included in initial contract	
	Fourth Year	\$180,000.00	
	Fifth Year	\$180,000.00	
	<b>Total Software and Hardware Maintenance and Support Recurring Costs</b>	<b>\$720,000.00</b>	



**Attachment B**  
Master License Agreement

**Quest Software, Inc.  
Master Product Agreement****Agreement No: US-MPA-09-0132  
Agreement Date: December 28,  
2009**

This Master Product Agreement (the “**Agreement**”) is made between Quest Software, Inc. with its principal place of business located at 5 Polaris Way, Aliso Viejo, California, 92656 (“**Quest**”) and State of Michigan, with its principal place of business located at 7285 Parsons Drive, Lansing, MI, 48913, USA (“**Customer**”).

**1. Definitions.** Capitalized terms not defined in context shall have the meanings assigned to them below:

- (a) “**Affiliate**” means any legal entity controlling, controlled by, or under common control with a party to this Agreement, for so long as such control relationship exists.
- (b) “**Documentation**” means the user manuals and documentation that Quest delivers with the Software, and all copies of the foregoing.
- (c) “**Hardware**” means the hardware products purchased by Customer under this Agreement.
- (d) “**License Type**” means the model by which the Software is licensed (e.g., by server, by mailbox, by managed user) as indicated in the applicable Order.
- (e) “**Partner**” means a reseller or distributor that is under contract with Quest or another Partner and is authorized via the contract to resell the Products and/or Maintenance Services.
- (f) “**Product Guide**” means the document located at <http://www.quest.com/productguide> that contains the Product Terms.
- (g) “**Product Terms**” means the usage rights and other terms associated with each License Type or individual Product.
- (h) “**Products**” means the Software licenses and/or Hardware purchased by Customer under this Agreement.
- (i) “**Schedule**” means a document, such as a Quest Quotation, that is executed by the parties or their respective Affiliates in connection with an Order.
- (j) “**Software**” means the object code version of the software that is delivered pursuant to an Order as well as any corrections, enhancements, and upgrades to such software that Quest may provide to Customer pursuant to this Agreement, and all copies of the foregoing.

**2. Ordering.**

- (a) Customer and its Affiliates may order Products and Maintenance Services under this Agreement from (a) Quest or its Affiliates by executing a Schedule or (b) from a Partner by issuing a purchase order (“**PO**”) to the Partner (each Schedule or PO shall be an “**Order**”). Each Order shall include (i) a description, unit price, and quantity for each Product and/or Maintenance Service being ordered, and (ii) for Software, the License Type, License duration (if other than perpetual), and an express indication if the Software is to be used for MSP purposes. Each Order shall be the ordering party’s irrevocable commitment to purchase and pay for the Products and/or Maintenance Services stated in the Order and shall be subject to approval by Quest either in writing or by shipment (“**Approve**” or “**Approved**”).
- (b) If an Order is placed by an Affiliate of Customer, such Affiliate agrees to be bound by the terms of this Agreement and shall be considered the “Customer” as that term is used herein. If an Order is issued to and Approved by a Quest Affiliate, such Affiliate agrees to be bound by the terms of this Agreement and shall be considered “Quest” as that term is used herein.
- (c) Customer and Quest agree that (i) Orders issued by Customer to Quest shall be governed solely by the terms of this Agreement and the applicable Schedule, and (ii) Orders placed through a Partner shall be governed solely by the terms of this Agreement. Any conflicting or additional terms in or accompanying an Order will not be binding on Quest unless Quest accepts such terms in writing.
- (d) The Product Terms for Software identified in a Schedule that is issued to Quest shall be as stated in the Schedule, or, if no Product Terms are stated in the Schedule, then the Product Terms for such Software shall be as stated in the Product Guide as of the date of the Order. The Product Terms for Software ordered from a Partner shall be as stated in the Product Guide as of the date of the Order.
- (e) Product Terms that conflict with the Product Guide, and future pricing commitments that are agreed upon by the parties, must be stated in a Schedule signed by Quest and Customer.

**3. Software License.**

- (a) **Internal Use License.** Subject to the terms of this Agreement, Quest grants to Customer, and Customer accepts from Quest, a perpetual (unless otherwise set forth in an Order), non-exclusive, non-transferable (except as otherwise set forth in Section 17b), and non-

sublicensable license to (i) install, execute, access, run, or otherwise use the quantities of each item of Software identified in the applicable Order within the parameters of the Product Terms associated with the applicable Product and License Type, (ii) make a reasonable number of additional copies of the Software to be used solely for non-productive archival or passive disaster recovery purposes, so long as neither the original and a copy nor two copies of the same Software are used at the same time, and (iii) make and use copies of the Documentation as reasonably necessary to support Customer's authorized users in their use of the Software (collectively, "**License**"). Except for MSP Licenses (as defined below), each License shall be used by Customer solely to manage its own internal business operations as well as the business operations of its Affiliates.

(b) **MSP License.** If an MSP License is specifically identified in an Order, Customer shall be granted a License to use the Software identified in the Order and the associated Documentation as a managed service provider ("**MSP**") to provide software and systems management services, including, without limitation, application, operating system, and database implementation, performance tuning, and maintenance services ("**Management Services**"), for the benefit of a single named client ("**Client**"), pursuant to the terms of this Agreement and the MSP Use Terms in the Product Guide.

(c) **Evaluation License.** If an Order indicates that Software is to be used for evaluation purposes, Customer shall be granted a non-production License to use the Software identified in the Order and the associated Documentation solely for Customer's own internal evaluation purposes for an evaluation period of up to thirty (30) days from the date of delivery of the Software, plus any extensions granted by Quest in writing (the "**Evaluation Period**"). There is no fee for Customer's use of the Software for non-production evaluation purposes during the Evaluation Period, however, Customer is responsible for any applicable shipping charges or taxes which may be incurred, and any fees which may be associated with usage beyond the scope permitted herein. Customer's opportunity for a free evaluation of the Software is limited to one Evaluation Period per release of the Software. Notwithstanding anything otherwise set forth in this Agreement, Customer understands and agrees that evaluation Software is provided "AS IS" and that Quest does not provide a Warranty or Maintenance Services for evaluation Licenses.

(d) **Third Party Use.** If Customer contracts with a third party who performs Software implementation, configuration, consulting or outsourcing services ("**Service Provider**"), the Service Provider may use the Software and Documentation Licensed by Customer hereunder solely for purposes of providing such services to Customer, provided that (i) Customer ensures that the Service Provider uses the Software and Documentation in accordance with the terms of this Agreement, (ii) the use of the Software and Documentation by the Service Provider will not violate the terms of the export restrictions set forth herein, and (iii) the Service Provider is not a Quest competitor. Customer shall be jointly and severally liable to Quest for the acts and omissions of its Service Providers in connection with their permitted use of the Software and Documentation.

(e) **Freeware.** If a freeware version of Quest software ("Freeware") is downloaded by Customer from **Error! Hyperlink reference not valid.** a Quest website, the terms of such use shall be governed by the applicable Freeware definition provided at: [www.quest.com/productguide](http://www.quest.com/productguide).

**4. Restrictions.** Except to the extent expressly permitted by applicable law, and to the extent that Quest is not permitted by that applicable law to exclude or limit the following rights, Customer may not reverse engineer, decompile, disassemble, or attempt to discover or modify in any way the underlying source code of the Products, Documentation or any part thereof. In addition, Customer may not (i) modify, translate, localize, adapt, rent, lease, loan, create or prepare derivative works of, or create a patent based on the Products, Documentation or any part thereof, or (ii) resell the Products or Documentation or use the Products or Documentation in any commercial time share arrangement, in connection with the operation of any nuclear facilities, or for purposes which are competitive to Quest. Each permitted copy of the Software and Documentation made by Customer hereunder must contain all titles, trademarks, copyrights and restricted rights notices as in the original. Customer understands and agrees that the Products may work in conjunction with third party products and Customer agrees to be responsible for ensuring that it is properly licensed to use such third party products. Notwithstanding anything otherwise set forth in this Agreement, the terms and restrictions set forth herein shall not prevent or restrict Customer from exercising additional or different rights to any open source software that may be contained in or provided with the Products in accordance with the applicable open source licenses.

**5. Reservation of Rights and Ownership.** Quest reserves any and all rights, implied or otherwise, which are not expressly granted to Customer in this Agreement. Customer understands and agrees that (i) the Products are protected by copyright and other intellectual property laws and treaties, (ii) Quest and/or its suppliers own the title, copyright, and other intellectual property rights in the Products, (iii) the Software is licensed, and not sold, and (iv) this Agreement does not grant Customer any rights to Quest's trademarks or service marks.

**6. Hardware.** In the event Customer acquires Hardware under this Agreement, title to such Hardware shall pass to Customer upon shipment (unless such Hardware is rented, leased or loaned to Customer).

**7. Payment.** Customer agrees to pay to Partner the fees specified in each Order (unless the Order is made directly with Quest), including any applicable shipping fees. Customer will be invoiced promptly following delivery of the Products or prior to the commencement of any Renewal Maintenance Period and Customer shall make all payments due to Partner (unless the Order is made directly with Quest) in full within forty-five (45) days from the date of each invoice or such other period (if any) stated in a Schedule.

**8. Taxes.** The fees stated in an Order may not include taxes. If Quest is required to pay sales, use, property, value-added or other taxes based on the Products or Maintenance Services provided under this Agreement or on Customer's use of Products or Maintenance Services, then such taxes shall be billed to and paid by Customer. This Section does not apply to taxes based on Quest's income.

## 9. Term and Termination.

1.(a)**Term.** The term of this Agreement will begin on the Agreement Date set forth above and will continue for three (3) years thereafter unless earlier terminated in accordance with the provisions hereof (the "**Initial Term**"). Upon expiration of the Initial Term, this Agreement may be renewed for two additional terms of one (1) year (each, a "**Renewal Term**") by mutual written agreement of the parties.

(b) **Termination.** This Agreement, or a License granted hereunder, may be terminated (i) by mutual agreement of Quest and Customer, (ii) by Quest, if Customer or a Service Provider commits a material breach of this Agreement and fails to cure such breach to Quest's reasonable satisfaction within thirty (30) days following receipt of Quest's notice thereof, or (iii) by Customer for any reason upon thirty (30) days written notice to Quest. Licenses that are not the subject of a particular breach may not be terminated by Quest, but any noncompliance with the "*Restrictions*," "*Nondisclosure*" or "*Usage Verification*" Sections of this Agreement will be considered a material breach of all Licenses.

(c) **Effect of Expiration or Termination.** In the event a party elects not to renew this Agreement upon the expiration of the Initial Term or a Renewal Term as set forth in Section 9(a), this Agreement shall expire. Upon expiration of this Agreement, Customer may no longer place, and Quest will no longer Approve Orders under this Agreement; however, the Licenses purchased by Customer prior to such expiration will continue in effect and will remain subject to this Agreement until each such License expires or is otherwise terminated. Upon termination of this Agreement in accordance with Section 9(b), or expiration or termination of a License for any reason, all rights granted to Customer for the applicable License(s) shall immediately cease and Customer shall immediately: (i) cease using the applicable Software and Documentation, (ii) return the applicable Software to Quest together with all Documentation and other materials associated with the Software and all copies of any of the foregoing, or destroy such items, (iii) cease using the Maintenance Services associated with the applicable License(s), (iv) pay Quest or the applicable Partner all amounts due and payable up to the date of termination, and (v) give Quest a written certification that Customer has complied with all of the foregoing obligations. Termination of this Agreement or a License shall be without prejudice to any other remedies that the terminating party may have under law, subject to the limitations and exclusions set forth in this Agreement.

(d) **Survival.** Any provision of this Agreement that requires or contemplates execution after termination of this Agreement or expiration or termination of a License is enforceable against the other party and their respective successors and assignees notwithstanding termination or expiration, including, without limitation, the "*Payment*," "*Taxes*," "*Effect of Expiration or Termination*," "*Survival*," "*Warranty Disclaimer*," "*Infringement*," "*Limitation of Liability*," "*Nondisclosure*," "*Usage Verification*," and "*General*" Sections of this Agreement.

**10. Export.** Customer acknowledges and agrees that the Products are subject to the export control laws, rules, regulations, restrictions and national security controls of the United States and other applicable foreign agencies (the "**Export Controls**"), and agrees not to export or re-export, or allow the export or re-export of the Products or any copy, portion or direct product of the foregoing in violation of the Export Controls. Customer hereby represents that (i) Customer is not an entity or person to which shipment of Products is prohibited by the Export Controls; and (ii) Customer will not export, re-export or otherwise transfer the Products to (a) any country subject to a United States trade embargo, (b) a national or resident of any country subject to a United States trade embargo, (c) any person or entity to which shipment of Products is prohibited by the Export Controls, or (d) anyone who is engaged in activities related to the design, development, production, or use of nuclear materials, nuclear facilities, nuclear weapons, missiles or chemical or biological weapons.

**11. Maintenance.** During any Maintenance Period and for the applicable fees, Quest shall make available to Customer the Maintenance Services for the Software as defined in this Section. The first Maintenance Period begins on the date of delivery of the Software following an Approved Order and ends twelve (12) months thereafter unless otherwise set forth in the applicable Order (the "**Initial Maintenance Period**"). Following the Initial Maintenance Period, Maintenance Services may be renewed for additional terms of twelve (12) months (each, a "**Renewal Maintenance Period**") upon the mutual agreement of the parties, in conjunction with the contractual term limits with this agreement. Cancellation of Maintenance Services will not terminate Customer's rights to continue to use the Software. Maintenance fees shall be due in advance of a Renewal Maintenance Period and shall be subject to the payment requirements set forth in this Agreement. The procedure for reinstating Maintenance Services after it has lapsed is posted at [http://support.quest.com/Maintenance\\_Service.asp](http://support.quest.com/Maintenance_Service.asp).

Except as otherwise stated in the Product Guide, "Maintenance Services" shall be available via the Internet, e-mail, or telephone and shall mean the following:

(a) Quest shall make available to Customer new versions and releases of the Software, including Software corrections, enhancements and upgrades, if and when Quest makes them generally available without charge as part of Maintenance Services.

(b) Quest shall respond to unlimited communications from Customer that report Software failures not previously reported to Quest by Customer. Nothing in the foregoing shall operate to limit or restrict follow up communication by Customer regarding Software failures.

(c) Quest shall respond to requests from Customer's technical coordinators for assistance with the operational/technical aspects of the Software; provided that Quest shall have the right to limit such responses if Quest determines, in its sole reasonable discretion, that on-site consulting services would be more appropriate to address the scope and nature of the requests. Any such onsite consultation would be pursuant to a services agreement as agreed upon by the parties.

(d) Customer shall have access to Quest's Support Web site at <http://support.quest.com> ("**SupportLink**").

(e) Maintenance Services are available during standard support hours (“**Business Hours**”) as indicated on SupportLink. In addition, Customer may purchase Business Critical Support (i.e. 24x7 Severity Level 1 support) for certain Software. The list of Software for which Business Critical Support is available and/or required is set forth on SupportLink.

(f) During Business Hours, Quest will respond within one (1) hour to a call from Customer which reports a critical Software condition (a “**Severity Level 1 Problem**”). Customer must use commercially reasonable efforts to provide Quest with the necessary remote access to facilitate the identification and resolution of a Severity Level 1 Problem. Quest’s ability to identify and resolve a Severity Level 1 Problem may be delayed without such remote access.

(g) The Maintenance Services for those Software products that Quest has obtained through an acquisition or merger may, for a period of time following the effective date of the acquisition or merger, be governed by terms other than those in this Section 11. The applicable different terms, if any, shall be stated on SupportLink.

## 12. Warranties.

(a) **Software Warranty.** Quest warrants that, for a period of thirty (30) days following the initial delivery of Software pursuant to an Approved Order (the “**Warranty Period**”), (i) the media provided by Quest, if any, on which the Software is recorded will be free from material defects in materials and workmanship under normal use, (ii) the operation of the Software, as provided by Quest, will substantially conform to the Documentation applicable to such Software, and (iii) the Software as delivered by Quest does not contain any viruses, worms, Trojan Horses, or other malicious or destructive code designed by Quest to allow unauthorized intrusion upon, disabling of, or erasure of the Software (however, the Software may contain a key limiting use of the Software to within the scope of License granted, and license keys issued by Quest for temporary use are time-sensitive) (the “**Warranties**”). Customer must give written notice to Quest of any breach of the Warranties no later than thirty days following the expiration of the Warranty Period.

Customer’s exclusive remedies, and Quest’s sole obligations, for any such breach of these Warranties shall be as follows: (a) for the warranty in subsection (i), Quest shall, at its expense, replace any defective media; (b) for the warranty in subsection (ii), Quest shall correct or provide a workaround for reproducible errors in the Software that cause a breach of the warranty within a reasonable time considering the severity of the error and its effect on Customer, or, at Quest’s option, refund the license fees paid for the nonconforming Software upon return of such Software to Quest and termination of the related License(s) hereunder; and (c) for the warranty in subsection (iii), Quest shall provide a copy of the Software that is in conformance with such warranty.

The foregoing Warranties shall not apply to any non-conformance (i) that Quest cannot recreate after exercising commercially reasonable efforts to attempt to do so; (ii) caused by misuse of the Software or by using the Software in a manner that is inconsistent with this Agreement or the Documentation; or (iii) arising from the modification of the Software by anyone other than Quest.

(b) **Hardware Warranty.** Hardware shall be warranted in accordance with the warranty document delivered with the Hardware and/or included on the hardware manufacturers’ website. In the event Customer acquires Hardware that is delivered with a third party warranty (“**Third Party Warranty**”), Customer will rely solely on the applicable third party for all Third Party Warranty obligations.

(c) **Warranty Disclaimer.** THE EXPRESS WARRANTIES AND REMEDIES SET FORTH IN THIS SECTION ARE THE ONLY WARRANTIES AND REMEDIES PROVIDED BY QUEST HEREUNDER. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALL OTHER WARRANTIES OR REMEDIES ARE EXCLUDED, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, NON-INFRINGEMENT, SATISFACTORY QUALITY, AND ANY WARRANTIES ARISING FROM USAGE OF TRADE OR COURSE OF DEALING OR PERFORMANCE. QUEST DOES NOT WARRANT UNINTERRUPTED OR ERROR-FREE OPERATION OF THE PRODUCTS.

**13. Infringement.** Quest will at its own expense defend or settle any claim, suit, action, or proceeding brought against Customer by a third party to the extent it is based on an allegation that the Software directly infringes any patent, copyright, trademark, or other proprietary right enforceable in the country in which the Software is delivered to Customer, or misappropriates a trade secret in such country (a “**Claim**”). Additionally, Quest shall pay any judgments finally awarded against Customer under a Claim or any amounts assessed against Customer in any settlements of a Claim, and reasonable administrative costs or expenses, including without limitation reasonable attorneys’ fees, necessarily incurred by Customer in responding to the Claim. Quest’s obligations under this Section are conditioned upon Customer (i) giving prompt written notice of the Claim to Quest; (ii) permitting Quest to retain sole control of the investigation, defense or settlement of the Claim, and (iii) providing Quest with such cooperation and assistance as Quest may reasonably request from time to time in connection with the investigation, defense or settlement of the Claim. Quest shall have no obligation hereunder to defend Customer against any Claim (a) resulting from use of the Software other than as authorized in this Agreement, (b) resulting from a modification of the Software other than by Quest, or (c) based on Customer’s use of the Software after Quest recommends discontinuation because of possible or actual infringement, (d) based on Customer’s use of a superseded or altered release of Software if the infringement would have been avoided by use of a current or unaltered release of the Software made available to Customer, or (e) to the extent the Claim arises from or is based on the use of the Software with other products, services, or data not supplied by Quest if the infringement would not have occurred but for such use. If Customer’s use of the Software is enjoined as a result of a Claim, Quest shall, at its expense and option either (i) obtain for Customer the right to continue using the Software, (ii) replace the Software with a functionally equivalent non-infringing product, (iii) modify the Software so that it is non-infringing, or (iv) accept the return of the infringing Software and refund the license fee paid for the infringing Software, pro-rated over a sixty (60) month period from the date of delivery of the Software following an Approved Order. This Section states the entire liability of Quest, and Customer’s sole and exclusive remedy, with respect to a Claim.

**14. Limitation of Liability.** EXCEPT FOR (A) ANY BREACH OF THE "RESTRICTIONS" OR "NONDISCLOSURE" SECTIONS OF THIS AGREEMENT, (B) AMOUNTS CONTAINED IN JUDGMENTS OR SETTLEMENTS WHICH QUEST IS LIABLE TO PAY ON BEHALF OF CUSTOMER UNDER THE "INFRINGEMENT" SECTION OF THIS AGREEMENT, OR (C) ANY LIABILITY TO THE EXTENT LIABILITY MAY NOT BE EXCLUDED OR LIMITED AS A MATTER OF LAW, IN NO EVENT SHALL QUEST, ITS AFFILIATES, OR SUPPLIERS, OR CUSTOMER OR ITS AFFILIATES, BE LIABLE FOR ANY LOSS OF REVENUE, LOSS OF ACTUAL OR ANTICIPATED PROFITS, LOSS OF BUSINESS, LOSS OF CONTRACTS, LOSS OF GOODWILL OR REPUTATION, LOSS OF ANTICIPATED SAVINGS, LOSS OF, DAMAGE TO OR CORRUPTION OF DATA, OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND, IN EACH CASE HOWSOEVER ARISING, WHETHER SUCH LOSS OR DAMAGE WAS FORESEEABLE OR IN THE CONTEMPLATION OF THE PARTIES AND WHETHER ARISING IN OR FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, OR OTHERWISE.

EXCEPT FOR (A) ANY BREACH OF CUSTOMER'S PAYMENT OBLIGATIONS; (B) ANY BREACH OF THE "SOFTWARE LICENSE," "RESTRICTIONS," "EXPORT" OR "NONDISCLOSURE" SECTIONS OF THIS AGREEMENT, OR ANY OTHER VIOLATION OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS; (C) QUEST'S EXPRESS OBLIGATIONS UNDER THE "INFRINGEMENT" SECTION OF THIS AGREEMENT; OR (D) ANY LIABILITY TO THE EXTENT LIABILITY MAY NOT BE EXCLUDED OR LIMITED AS A MATTER OF LAW, THE MAXIMUM AGGREGATE AND CUMULATIVE LIABILITY OF QUEST, ITS AFFILIATES AND SUPPLIERS, AND CUSTOMER AND ITS AFFILIATES UNDER THIS AGREEMENT, WHETHER ARISING IN OR FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, OR OTHERWISE, SHALL NOT EXCEED THE FEES PAID AND/OR OWED (AS APPLICABLE) BY CUSTOMER OR ITS AFFILIATES FOR THE PRODUCTS OR MAINTENANCE SERVICES THAT ARE THE SUBJECT OF THE CLAIM. FOR MAINTENANCE SERVICES OR A PRODUCT SUBJECT TO RECURRING FEES, THE LIABILITY SHALL NOT EXCEED THE AMOUNT PAID AND/OR OWED (AS APPLICABLE) FOR SUCH MAINTENANCE SERVICE OR PRODUCT DURING THE TWELVE (12) MONTHS PRECEDING THE CLAIM.

Quest's Affiliates and suppliers and Customer's Affiliates shall be beneficiaries of this "Limitation of Liability" section and Customer's Service Providers are entitled to the rights granted under the "Third Party Use" section of this Agreement; otherwise, no third party beneficiaries exist under this Agreement. Quest expressly excludes any and all liability to Customer's Service Providers, Clients and to any other third party.

**15. Nondisclosure.** Quest and the Customer 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 Quest shall mean all non-public proprietary information of Quest (other than Confidential Information of the Customer as defined below), which is marked confidential, restricted, proprietary, or with a similar designation, or information which, due to its character and nature, a reasonable person under like circumstances would treat as confidential, including, without limitation, the Products (in source code and/or object code form), information regarding the functionality and performance of the Products, benchmark test results regarding the Products, and any Software license keys provided to Customer.. "Confidential Information" of the Customer must mean any information which is retained in confidence by the Customer (or otherwise required to be held in confidence by the Customer under applicable federal, state and local laws and regulations) or which, in the case of tangible materials provided to Quest by the Customer under its performance under this Contract, is marked as confidential, proprietary or with a similar designation by the Customer. "Confidential Information" excludes any information (including this Contract) that is publicly available under the Michigan FOIA.

Protection and Destruction of Confidential Information. The Customer and Quest shall 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 Quest nor the Customer will (i) make any use of the Confidential Information of the other except as contemplated by this Agreement, (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 will limit disclosure of the other party's Confidential Information to employees and subcontractors who must have access to fulfill the purposes of this Agreement. Disclosure to, and use by, a subcontractor is permissible where (A) use of a subcontractor is authorized under this Agreement, (B) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's scope of responsibility, and (C) Quest obligates the subcontractor in a written Agreement to maintain the Customer's Confidential Information in confidence.

Promptly upon request, either party shall certify to the other party that it has destroyed all of the other party's Confidential Information.

Exclusions. Notwithstanding the foregoing, the provisions in this Section will not apply to any particular information which the Customer or Quest 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 this Section 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.

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.

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

**16. Usage Verification.** At Quest's request, but not more frequently than once per year, Customer shall furnish Quest with a document signed by an authorized representative verifying Customer's installations and usage of the Products. Customer will permit Quest to review Customer's deployment and use of the Products for compliance with the terms and conditions of this Agreement. Any such reviews shall be scheduled at least fifteen (15) days in advance, shall be conducted during normal business hours at Customer's facilities, and shall not unreasonably interfere with Customer's business activities. If Customer's use of the Products is found to be greater than contracted for Customer will be invoiced for the additional use and the unpaid fees shall be payable in accordance with this Agreement. This Section shall not limit or restrict any other rights or remedies of Quest that are otherwise set forth in this Agreement or available at law.

**17. General.**

(a) **Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan, without giving effect to any conflict of laws principles that would require the application of laws of a different state. The parties agree that neither the United Nations Convention on Contracts for the International Sale of Goods, nor the Uniform Computer Information Transaction Act (UCITA) shall apply to this Agreement, regardless of the states in which the parties do business or are incorporated.

(b) **Assignment.** Except in connection with the sale, merger, acquisition, or other change of control of either party, neither party shall, in whole or part, assign or transfer any part of this Agreement or any rights hereunder without the prior written consent of the other party. Any attempted transfer or assignment by Customer that is not permitted by this Agreement shall be null and void.

(c) **Severability.** If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law, such provision will be enforced to the maximum extent permissible and the remaining provisions of this Agreement will remain in full force and effect. Notwithstanding the foregoing, the terms of this Agreement that limit, disclaim, or exclude warranties, remedies or damages are intended by the parties to be independent and remain in effect despite the failure or unenforceability of an agreed remedy. The parties have relied on the limitations and exclusions set forth in this Agreement in determining whether to enter into it.

(d) **Use by U.S. Government.** The Software is a "commercial item" under FAR 12.201. Consistent with FAR section 12.212 and DFARS section 227.7202, any use, modification, reproduction, release, performance, display, disclosure or distribution of the Software or Documentation by the U.S. government shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted herein.

(e) **Intentionally Omitted**

(f) **Notices.**

Any notice given to a party under this Agreement shall be deemed effective 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.

(g) **Disclosure of Customer Status.** Quest may include Customer in its listing of customers and, upon written consent by Customer, announce Customer's selection of Quest in its marketing communications.

(h) **Waiver.** Performance of any obligation required by a party hereunder may be waived only by a written waiver signed by an authorized representative of the other party, which waiver shall be effective only with respect to the specific obligation described therein. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

(i) **Injunctive Relief.** Each party acknowledges and agrees that in the event of a material breach of this Agreement, including but not limited to a breach of the "Software License," "Restrictions" or "Nondisclosure" Sections of this Agreement, the non-breaching party shall be entitled to seek immediate injunctive relief, without limiting its other rights and remedies.

(j) **Counterparts.** This Agreement and the applicable Schedule(s) may be executed in one or more counterparts, each of which shall be deemed an original and shall constitute one and the same instrument. Signatures exchanged via facsimile will be deemed originals.

(k) **Force Majeure.** Each party will be excused from performance for any period during which, and to the extent that, it is prevented from performing any obligation or service as a result of causes beyond its reasonable control, and without its fault or negligence, including without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, communication line failures, and power failures. Nothing in the foregoing shall be deemed to relieve Customer or its Affiliates of its obligation to pay fees owed under this Agreement.

(l) **Equal Opportunity.** Quest Software Inc. is a federal contractor and Affirmative Action employer (M/F/D/V) as required by the Equal Opportunity clause C.F.R. § 60-741.5(a).

(m) **Headings.** Headings in this Agreement are for convenience only and do not affect the meaning or interpretation of this Agreement. This Agreement will not be construed either in favor of or against one party or the other, but rather in accordance with its fair meaning. When the term "including" is used in this Agreement it will be construed in each case to mean "including, but not limited to."

(n) **Entire Agreement.** This Agreement constitutes the entire agreement between the parties regarding the subject matter thereof and supersedes all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of this Agreement. In the event of a conflict between the terms of this Agreement and the terms contained in a Schedule signed by both parties, the terms in the Schedule shall control. If necessary, Quest and Customers Affiliates shall negotiate in good faith to enter into a local agreement that reflects local laws, terms and conditions and references this Agreement. In the event of a conflict between the terms in this Agreement and the terms in any local agreement, the terms in the local agreement shall take precedence. Neither this Agreement, nor an Order, may be modified or amended except by a writing executed by a duly authorized representative of each party. No other act, document, usage or custom shall be deemed to amend or modify this Agreement or an Order. Delivery of Products shall be FOB Shipping Point.

**18. Source Code Release.** If Quest ceases business operations, files under Chapter 7 of the Bankruptcy Act, or is ordered by any court of competent jurisdiction to be wound up or liquidated, Quest shall deliver to Customer a copy of the source code for Software licensed under this Agreement for which Customer has then purchased Maintenance Services, which shall be subject to Section 15 "Nondisclosure" of this Agreement, and which may be modified and used only for Customer's internal business purposes.

IN WITNESS WHEREOF, Quest and the Customer have caused this Agreement to be executed and delivered by their respective duly authorized representatives.

**Quest Software, Inc.**

**Customer: State of Michigan**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_