



STATE OF MICHIGAN ENTERPRISE PROCUREMENT

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

CONTRACT CHANGE NOTICE

Change Notice Number 8
to
Contract Number 071B0200182

CONTRACTOR	AMERICAN ASSOC OF STATE HIGHWAY & TRANS OFFICIALS
	444 N. Capitol Street N.W.
	Washington, DC 20001
	Angel Williams
	(202) 624-5808
	angelw@aashto.org
	*****4654

STATE	Program Manager	Kalanquin, John	DTMB
		517-241-0177	
		kalaquinj@Michigan.gov	
	Contract Administrator	Jarrod Barron	DTMB
		(517) 284-7045	
		BarronJ1@michigan.gov	

CONTRACT SUMMARY				
DESCRIPTION: AASHTO Transportation System				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
April 15, 2010	June 30, 2012	2 - 1 Year	June 30, 2016	
PAYMENT TERMS		DELIVERY TIMEFRAME		
N/A		N/A		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
MINIMUM DELIVERY REQUIREMENTS				
N/A				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input checked="" type="checkbox"/>	5 years	June 30, 2021
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$7,764,675.00		\$ 10,000,000.00	\$17,764,675.00	

DESCRIPTION: Effective June 7, 2016, the parties agree to extend the contract 5 years pursuant to Section 5.7.6 of the Michigan Procurement Policy Manual to continue use of the proprietary systems. The parties also add three option years to the contract which may be used upon mutual agreement, allowing for a potential future revised expiration date of June 5, 2024. All other terms, conditions, specifications, and pricing remain the same. Per Contractor, Agency and DTMB Procurement agreement and State Administrative Board approval.

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

CHANGE NOTICE NO. 7
 to
CONTRACT NO. 071B0200182
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
American Assoc Of State Highway & Trans Officials 444 N. Capitol Street N.W. Washington DC, 20001	Angel Williams	angelw@ashto.org
	PHONE	CONTRACTOR'S TAX ID NO. (LAST FOUR DIGITS ONLY)
	(202) 624-5808	*****4654

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER / CCI	DTMB	Kalanquin, John	517-241-0177	kalaquinj@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Jarrod Barron	517-284-7045	Barronj1@michigan.gov

CONTRACT SUMMARY			
DESCRIPTION: Aashto Transportation System			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
April 15, 2010	June 30, 2012	2 - 1 Year	June 30, 2016
PAYMENT TERMS		DELIVERY TIMEFRAME	
N/A		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
N/A			

DESCRIPTION OF CHANGE NOTICE				
EXERCISE OPTION?	LENGTH OF OPTION	EXERCISE EXTENSION?	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input type="checkbox"/>		
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$7,764,675.00		\$0	\$7,764,675.00	

DESCRIPTION: Effective December 9, 2015, the State authorizes the second of two \$81,000.00 payments for the \$162,000.00 participation fee for member-state involvement in the Project Solicitation software development program. See Change Notice 5 for authorization of first payment. This payment will be made from existing contract funds. All other terms, conditions, pricing and specifications remain the same. Per contractor, agency and DTMB Procurement approval.

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

CHANGE NOTICE NO. 6
 to
CONTRACT NO. 071B0200182
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
American Association of State Highway & Transportation Officials (AASHTO) 444 N. Capitol Street, N.W., Suite 249 Washington, D.C. 20001	Angel Williams	angelw@ashto.org
	PHONE	CONTRACTOR'S TAX ID NO. (LAST FOUR DIGITS ONLY)
	(202) 624-5808	4654

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER / CCI	DTMB	John Kalaquin	(517) 241-0177	kalaquinj@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Mike Breen	(517) 284-7002	breenm@michigan.gov

CONTRACT SUMMARY			
DESCRIPTION: AASHTO Transportation System – Department of Transportation			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
April 15, 2010	June 30, 2012	2, one year	June 30, 2015
PAYMENT TERMS		DELIVERY TIMEFRAME	
N/A		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
N/A			

DESCRIPTION OF CHANGE NOTICE				
EXERCISE OPTION?	LENGTH OF OPTION	EXERCISE EXTENSION?	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input checked="" type="checkbox"/>	1 year	June 29, 2016
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$5,764,675.00		\$2,000,000.00	\$7,764,675.00	

DESCRIPTION: Effective July 7, 2015, this contract is hereby extended to June 29, 2016 and increased by \$2,000,000.00. All other terms, conditions, pricing and specifications remain the same. Per contractor and agency agreement, DTMB Procurement approval and the approval of the State Administrative Board on July 7, 2015.

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

CHANGE NOTICE NO. 5
 to
CONTRACT NO. 071B0200182
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
American Association of State Highway & Transportation Officials (AASHTO) 444 N. Capitol Street, N.W., Suite 249 Washington, DC 20001	Angel Williams	angelw@ashto.org
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(202) 624-5808	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	DTMB	John Kalaquin	517-241-0177	kalaquinj@michigan.gov
BUYER	DTMB	Barb Suska	517-284-7026	Suskab2@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: AASHTO Transportation Systems – Department of Transportation			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
April 15, 2010	June 30, 2012	2, 1 Year Options	June 30, 2015
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS:			

DESCRIPTION OF CHANGE NOTICE:				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	<input type="checkbox"/>	<input type="checkbox"/>		June 30, 2015
VALUE/COST OF CHANGE NOTICE:		ESTIMATED REVISED AGGREGATE CONTRACT VALUE:		
\$81,000.00		\$5,764,675.00		
Effective October 24, 2014 this Contract is increased by \$81,000.00 to add AASHTOWare Project Bids, a solicitation fee to enhance an existing system that is being modernized. All other terms, conditions, pricing and specifications remain the same. Per contractor and DTMB Procurement approval.				

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

CHANGE NOTICE NO. 4
 to
CONTRACT NO. 071B0200182
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
American Association of State Highway & Transportation Officials (AASHTO) 444 N. Capitol Street, N.W., Suite 249 Washington, DC 20001	Angel Williams	angelw@ashto.org
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(202) 624-5808	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	DTMB	Mark Lawrence	517-241-1640	Lawrencem1@michigan.gov
BUYER	DTMB	Barb Suska	517-284-7026	Suskab2@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: AASHTO Transportation Systems – Department of Transportation			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
April 15, 2010	June 30, 2012	2, 1 Year Options	June 30, 2014
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS:			

DESCRIPTION OF CHANGE NOTICE:				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1 Year	June 30, 2015
VALUE/COST OF CHANGE NOTICE:		ESTIMATED REVISED AGGREGATE CONTRACT VALUE:		
\$680,000.00		\$5,683,675.00		

Effective July 15, 2014 this Contract is INCREASED by \$680,000.00 and EXTENDED for one (1) year. The new end date is June 30, 2015. All other terms, conditions, specifications, and pricing remain the same. Per vendor agreement, DTMB Procurement approval, and the approval of the State Administrative Board dated July 15, 2014.

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

June 25, 2013

CHANGE NOTICE NO. 3
 to
CONTRACT NO. 071B0200182
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
American Association of State Highway & Transportation Officials (AASHTO) 444 N. Capitol Street, N.W., Suite 249 Washington, DC 20001	Angel Williams	angelw@ashto.org
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(202) 624-5808	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	DTMB	Mark Lawrence	517-241-1640	Lawrencem1@michigan.gov
BUYER	DTMB	Reid Sisson	517-241-1638	sissonr@michigan.gov

CONTRACT SUMMARY:				
DESCRIPTION: AASHTO Transportation Systems – Department of Transportation				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
April 15, 2010	June 30, 2012	2, 1 Year Options	June 30, 2013	
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM	
N/A	N/A	N/A	N/A	
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS	
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
MINIMUM DELIVERY REQUIREMENTS:				

DESCRIPTION OF CHANGE NOTICE:				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1 Year	June 30, 2014
VALUE/COST OF CHANGE NOTICE:		ESTIMATED REVISED AGGREGATE CONTRACT VALUE:		
\$600,000.00		\$5,003,675.00		

Effective immediately, this Contract is utilizing the final option year and is INCREASED by \$600,000.00. The new end date is June 30, 2014.

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

Per vendor agreement, DTMB Procurement approval, and the approval of the State Administrative Board dated June 18, 2013.



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

May 24, 2012

CHANGE NOTICE NO. 2

to

CONTRACT NO. 071B0200182

between

THE STATE OF MICHIGAN

and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
American Association of State Highway & Transportation Officials (AASHTO) 444 N. Capitol Street, N.W., Suite 249 Washington, DC 20001	Angel Williams	angelw@ashto.org
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(202) 624-5808	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	DTMB	Mark Lawrence	(517) 241-1640	Lawrencem1@michigan.gov
BUYER:	DTMB	Reid Sisson	(517) 241-1638	sissonr@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: AASHTO Transportation Systems – Department of Transportation			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
	April 15, 2010	June 30, 2012	
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
MINIMUM DELIVERY REQUIREMENTS:			
N/A			

DESCRIPTION OF CHANGE NOTICE:	
OPTION EXERCISED: <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES	IF YES, NEW EXPIRATION DATE: June 30, 2013
Effective immediately, this contract is hereby EXTENDED one year using an option to extend, the new end date is June 30, 2013. Contract is also INCREASED by \$1,989,225.00. Please note that the buyer has been changed to Reid Sisson. Per vendor (letter dated February 21, 2012) and agency agreement, the approval of DTMB Procurement and the approval the State Administrative Board on June 19, 2012.	
VALUE/COST OF CHANGE NOTICE:	\$1,989,225.00
ESTIMATED REVISED AGGREGATE CONTRACT VALUE:	\$4,403,675.00



Kirk T. Steudle, P.E., President
Director, Michigan Department of Transportation

John Horsley, Executive Director

444 North Capitol Street NW, Suite 210, Washington, DC 20001
(202) 624-5800 Fax (202) 624-5806 • www.transportation.org

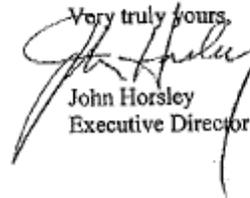
February 21, 2012

Larry Meachum
DTMB
c/o Michigan Department of Transportation
425 W. Ottawa St.
P.O. Box 30050
Lansing, MI 48909

Dear Mr. Meachum:

Pursuant to John Kalanquin's email dated February 16, 2012, AASHTO agrees to exercise the second "Option Year" of the agreement in accordance with the terms listed in contract 071B0200182. We understand that this optional year will start ~~June 30, 2012~~ and end ~~June 29, 2013~~ ^{July 1} 2013. *JH*

Very truly yours,



John Horsley
Executive Director

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

August 24, 2010

CHANGE NOTICE NO. 1
TO
CONTRACT NO. 071B0200182
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR AMERICAN ASSOCIATION OF STATE HIGHWAY & TRANSPORTATION OFFICIALS (AASHTO) 444 N. CAPITOL STREET, N.W., SUITE 249 WASHINGTON, DC 20001 Email: angelw@ashto.org	TELEPHONE (202) 624-5808 Angel Williams
	CONTRACTOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-3215 Steve Motz
Contract Compliance Inspector: Mark Lawrence (517) 241-1640 AASHTO Transportation Systems – Department of Transportation	
CONTRACT PERIOD: From: April 15, 2010 To: June 30, 2012	
TERMS N/A	SHIPMENT N/A
F.O.B. N/A	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A	
MISCELLANEOUS INFORMATION:	

NATURE OF CHANGE(S):

Commodity Code 924-45-11 for Software Maintenance is added to this contract. All other terms, conditions, pricing and specifications remain the same.

AUTHORITY/REASON(S):

Per agency request, vendor agreement, and approval from DTMB.

CONTRACT VALUE REMAINS: \$ 2,414,450.00

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

May 7, 2010

NOTICE
OF
CONTRACT NO. 071B0200182
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR AMERICAN ASSOCIATION OF STATE HIGHWAY & TRANSPORTATION OFFICIALS (AASHTO) 444 N. CAPITOL STREET, N.W., SUITE 249 WASHINGTON, DC 20001 Email: angelw@ashto.org	TELEPHONE (202) 624-5808 Angel Williams
	CONTRACTOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-3215 Steve Motz
Contract Compliance Inspector: Mark Lawrence (517) 241-1640 AASHTO Transportation Systems – Department of Transportation	
CONTRACT PERIOD: From: April 15, 2010 To: June 30, 2012	
TERMS <p style="text-align: center;">N/A</p>	SHIPMENT <p style="text-align: center;">N/A</p>
F.O.B. <p style="text-align: center;">N/A</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	
MISCELLANEOUS INFORMATION:	

Current Authorized Spend Limit: \$ 2,414,450.00

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

CONTRACT NO. 071B0200182
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR AMERICAN ASSOCIATION OF STATE HIGHWAY & TRANSPORTATION OFFICIALS (AASHTO) 444 N. CAPITOL STREET, N.W., SUITE 249 WASHINGTON, DC 20001 <p style="text-align: right;">Email: angelw@ashto.org</p>	TELEPHONE (202) 624-5808 Angel Williams CONTRACTOR NUMBER/MAIL CODE BUYER/CA (517) 241-3215 Steve Motz
Contract Compliance Inspector: Mark Lawrence (517) 241-1640 AASHTO Transportation Systems – Department of Transportation	
CONTRACT PERIOD: From: April 15, 2010 To: June 30, 2012	
TERMS <p style="text-align: center;">N/A</p>	SHIPMENT <p style="text-align: center;">N/A</p>
F.O.B. <p style="text-align: center;">N/A</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	
MISCELLANEOUS INFORMATION: <p>Current Authorized Spend Limit: \$ 2,414,450.00</p>	

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the RFP #071I9200211. Orders for delivery may be issued directly by the Department of Information Technology through the issuance of a Purchase Order Form.

FOR THE CONTRACTOR:

**AMERICAN ASSOCIATION OF STATE HIGHWAY
 & TRANSPORTATION OFFICIALS (AASHTO)**

_____ Firm Name

_____ Authorized Agent Signature

_____ Authorized Agent (Print or Type)

_____ Date

FOR THE STATE:

_____ Signature
Greg Faremouth, IT Division Director
 _____ Name/Title
Business Services Administration
 _____ Division

_____ Date



STATE OF MICHIGAN
Department of Technology, Management and Budget
Purchasing Operations

071B0200182

Buyer Name: Steve Motz
Telephone Number: (517) 335-4804
E-Mail Address: motzs@michigan.gov



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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 Work plan, 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 Work plan as Business Critical.
Chronic Failure	Defined in any applicable Service Level Agreements.
Deliverable	Physical goods and/or commodities as required or identified by a Work plan
DMB	Michigan Department of Technology, 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 Work plan, 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.
RESERVED	Section was included in this RFP template used to create this contract, but has been removed from the executed contract. 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 Request

The purpose of this contract is to provide a vehicle to purchase licenses to AASHTOWare Products and Services from the annual AASHTO catalog.

1.002 Background

AASHTO stands for the American Association of State Highway and Transportation Officials. AASHTO is a nonprofit, nonpartisan association that represents the member highway and transportation departments in the 50 states, the District of Columbia, and Puerto Rico. It is the only association that represents all five transportation modes – air, highways, public transportation, rail, and water. Its primary goal is to foster the development, operation, and maintenance of an integrated national transportation system.

The AASHTO Cooperative Computer Software Development Program, also referred to as the AASHTO Joint Development Program, is administered under the provisions of Administrative Resolution AR-2-86 as adopted and modified from time to time by the AASHTO Board of Directors. Under this program, each AASHTOWare[®] product and development project is guided by a task force. These task forces, together with other advisory task forces, are directed by the Special Committee on Joint Development (SCOJD).

Each year, AASHTO provides a catalog to describe the AASHTOWare products and projects to be offered in the next fiscal year, and to establish the license and participation fees. The AASHTO Executive Committee approves the annual program budget, while the Board of Directors retains responsibility for approving the policies governing the Software Development program.

AASHTOWare is a family of transportation software products developed under the AASHTO Cooperative Computer Software Development program. These products are maintained and enhanced by AASHTO and are available to AASHTO member agencies.

AASHTOWare products and services are essential pieces of MDOT's IT portfolio.

The impact to public health, welfare, and safety is related to safe roads and bridges.

The intent of this Contract is to provide software and services at a lower cost. AASHTO is a **non-profit** association. By allowing agencies across the country to combine their resources, the joint development program provides enormous economies of scale, particularly in comparison to developing and maintaining custom solutions. This results in significant cost savings, not only during initial software development, but throughout the software product life cycle. As an example, a new development project with 20 participants will allow each participating agency to receive the full benefits of the work effort, including all project deliverables, for only 5% of the total cost.

This contract will mitigate risk in the following way: one of the most often-cited benefits of joint development is that the process is centered on a best practices approach to design. Many AASHTOWare products are based on AASHTO standards and specifications—a recognized source of technical excellence in the transportation industry. Beyond this, specific AASHTOWare design decisions are made by groups of subject matter and information technology experts from participating agencies whose focus is on improving and selecting the best business processes before automating them into our software. This exchange of information among participants has a side benefit that extends beyond what it yields in the development of AASHTOWare products. AASHTOWare participants form a nationwide network of agencies using common software applications and are able to share their implementation experience with each other.

The AASHTO software development costs are shared with a number of other States, and the AASHTO is a non-profit association.



1.100 Scope of Work and Deliverables

1.101 In Scope

All Products and services offered by AASHTO will be presented in an annual AASHTO catalog. The AASHTO fiscal year is on a cycle of July 1 thru June 30 of each year.

Types of products and services available through the catalog each year may include but not limited to:

- Software licensing
- Documentation
- Maintenance and Support
 - Help Desk
- Other - Optional
 - Reserve bank of service units for future enhancements and/or legislative mandates

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

Any products or services that:

- are not related to transportation
- are not related to information technology
- are NOT in the annual AASHTO catalog.

1.103 RESERVED - Environment

1.104 Work And Deliverable

Each year, AASHTO provides a catalog to describe the AASHTOWare products and projects to be offered in the next fiscal year, and to establish the license and participation fees. The catalog can be found at the following web site: www.aashtoware.org

AASHTO will provide:

- an annual commitment package, so that the State can indicate which software products or projects it wishes to license or participate in
- Master License Agreement
- Supplemental License Agreement

In Addition to the above, the following Items will be provided as part of this contract;

Services

AASHTO does not provide services itself, that is done by subcontractors designated by AASHTO.

The State has the option to purchase additional product-related services with Service Units. The intent of Service Units is to offer the opportunity for an agency to acquire special fixed-fee increments or units of subcontractor-provided services and training.

The State will buy service units in whole amounts, but can use them in part. The remaining, unspent part of a service unit can be carried over for the life of the contract and beyond or used later in the current year, or rolled into the following year.

For enhancement work requiring multiple service units, individual and/or groups of member agencies may fund specific enhancement work through AASHTO's contracts with its software service providers.



For service requests, the State will issue a work plan to the subcontractor. The subcontractor's proposal will include 1) the hours required, 2) the cost in service units, and 3) a deadline to respond. The State will inform AASHTO that it accepts the proposal, and AASHTO will authorize the work to the vendor.

Software licenses

The State may elect to execute a license for one or more existing software products owned by the Association, collectively known as "AASHTOWare®".

Under this Agreement, AASHTOWare® license fees payable by the State to the Association shall be revised annually to reflect the current licenses fee(s) applicable to the State's selected software product(s) and licensing option(s).

The State will identify the modules to license at the beginning of each new AASHTO year, on the "AASHTOWare Products and Services Request Form".

Maintenance and Support

Maintenance and support is included in the cost of licensing.

Service Units

The State will identify the service units it wishes to buy on the "AASHTOWare Products and Services Request Form".

As described in the AASHTOWare Catalog, the State, at its discretion, may elect to purchase units of service provided by the Association's software support Contractor (s) to assist the State in its implementation of licensed AASHTOWare products and can include the following:

- Planning and conducting training events;
- Implementation planning;
- Technical assessment/technical planning;
- Application installation and configuration;
- Data mapping of current agency systems data to Trnsport (e.g. financial, pre-construction, materials management);
- Configuring of custom templates(e.g. agency specific material test methods);
- Interface development (e.g. from agency specific pre-construction systems and to agency specific financial management systems); and
- Conversion development to take data from existing agency systems and load into Trnsport (e.g. materials management data).

When services covered by this agreement are needed by the State, the state will prepare a Work Plan detailing the software product to be serviced, the specific technical services required and a schedule for completion of those services, which will be signed by the State and the appropriate AASHTO contractor. After consultation between the parties, the number of units necessary to perform the required technical services will be agreed upon.

The State will issue a Purchase Order to AASHTO for subcontractor-provided services.

AASHTO will invoice and receive payment on behalf of the agency, and forward the order and payment to the subcontractor in accordance with the prevailing agreement for such services.

The contractor will:

- provide proposals in response to work plans with the State
- schedule, and deliver products or services, directly to the State.

Subcontractor roles will be defined in each work plan.

1.200 Roles and Responsibilities

1.201 Contractor Staff, Roles, And Responsibilities

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

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

The AASHTO SPOC contact is:

Angelique Williams, AASHTOWare Business Manager
 444 N. Capitol Street, N.W., Suite 249
 Washington, DC 20001
 (202) 624-5808
 Fax 202-624-5469
 angelw@ashto.org

B. On Site Work Requirements

This section applies specifically to work performed by the subcontractor in connection with Service Units ordered by the State:

- 1. Location of Work**
Will be defined on all work plans
- 2. Hours of Operation:**
Will be defined on all work plans
- 3. Travel:**
Will be defined on all work plans and will not exceed State travel requirements
- 4. Additional Security and Background Check Requirements:**
Subcontractor must present certifications evidencing satisfactory Michigan State Police Background checks ICHAT and drug tests for all staff identified for assignment to this project.

In addition, proposed subcontractor 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 will pay for all costs associated with ensuring their staff meets all requirements.

1.202 State Staff, Roles, and Responsibilities

The State will complete and return to AASHTO an annual commitment package which identifies:

- the software products or projects in which the State wishes to license or participate
- the number of service units it wishes to buy
- the primary billing contact
- the State's contact person for each of the AASHTOWare product it wishes to license by completing a Primary Designee form provided by AASHTO.

The State will provide work plans to subcontractors. State roles will be defined in each work plan.

The State project team will consist of Executive Subject Matter Experts (SME's), and an MDIT and Agency project manager:

Executive Subject Matter Experts

The State will designate a primary contact for each AASHTO technical service project (business area) on the annual “AASHTOWare Primary Designee Form”.

State Project Manager- (MDIT and Agency)

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

The State’s Project Manager may provide the following services:

- Provide State facilities, as needed
- Coordinate the State resources necessary for the project
- Facilitate coordination between various external contractors
- Facilitate communication between different State departments/divisions
- Provide acceptance and sign-off of deliverable/milestone
- Review and sign-off of 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.

The State staff that will be involved with this contract are provided below:

Name	Agency/Division	Title
Kevin Fox	MDIT / Agency Services	Project Manager
Cliff Farr	MDOT	Automation Manager
John Kalanquin	MDIT / Agency Services	IT Manager
Nathan Buckwalter	MDIT / Agency Services	Client Service Director

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

Name	Agency/Division	Title
Mark Lawrence	MDIT/Bureau of Strategic Policy	Contract Administrator

1.203 Other Roles And Responsibilities

1.300 Project Plan

1.301 RESERVED - Project Plan Management (May be defined in each work plan)

1.302 RESERVED - Reports (May be defined in each work plan)

1.400 Project Management

1.401 RESERVED - Issue Management (May be defined in each work plan)

1.402 RESERVED - Risk Management (May be defined in each work plan)



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 State also employs change management in its administration of the work plan.

If a proposed work plan change is approved by the Agency, the Contract Administrator or Project Manager will submit a request for change to the Vendor. **Contractors who provide products or services prior to the issuance of a Change Notice by the Contract Administrator or Project Manager, risk non-payment for the out-of-scope/pricing products and/or services.**

1.500 Acceptance – (May be defined in each work plan)

Services

All service requests will be made in a work plan. That document will describe the specific acceptance criteria for all service.

Software licenses

The State will receive license keys and/ or site license numbers for software requested.

Training

Training requests will be made in each work plan requested. That document will describe the specific acceptance criteria for the training.

Maintenance and Support

AASHTO will provide access to a help desk system for issue -tracking system, and problem reporting.

Service Units

The number and value of service units will be verified on a monthly report.

1.502 Final Acceptance

Final Acceptance of work performed by the subcontractor under Service Units will be defined in each work plan. That document will describe the specific final acceptance criteria for all services.

1.600 Compensation and Payment

1.601 Compensation and Payment

Each year, AASHTO provides a catalog to describe the AASHTOWare products, projects and service units to be offered in the next fiscal year, and to establish the license and participation fees. Additionally each work plan will provide for the cost, based on the number of Service units required. All costs for work performed under service units will be defined in the individual work plan and as provided for in the AASHTOWare catalog.

Method of Payment

- a. For Service Units, The State agrees to accept an invoice from the Association for the dollar amount applicable to the number of whole service units ordered by the State. Service units cannot be prorated and shall be payable to the Association upon receipt of the invoice.”
- b. For License Fees, The State agrees to accept an invoice from the Association for the dollar amount applicable to the sum of the fees associated with the products/options specified on the annual Software Request form submitted by the State, as described earlier, based upon the descriptions in the AASHTOWare catalog.

Out-of-Pocket Expenses

If Contractor reduces its prices for any of the software or services during the term of this Contract, the State shall have the immediate benefit of such lower prices for new purchases. Contractor shall send notice to the State’s MDIT Contract Administrator as well with updated prices annually in the catalog or as noted on the AASHTO web-site.



Work Plans and Issuance of Purchase Orders

- Unless otherwise agreed by the parties, each work plan may 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 Work plans or Purchase Orders (PO) executed under this Contract. Contractor shall not be obliged or authorized to commence any work to implement a Work plan until authorized via a PO issued against this Contract. Contractor shall perform in accordance with this Contract, including the Work plans/Purchase Orders executed under it.

Invoicing

AASHTO will submit properly itemized invoices to "Bill To" Address on Purchase Order. Invoices must provide and itemize, as applicable and only for services rendered and licenses received:

- Contract number;
- Purchase Order number
- Contractor name, address, phone number, and Federal Tax Identification Number;
- Description of any commodities/hardware, 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 discount.

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

1.602 RESERVED Holdback



Article 2. Terms and Conditions

2.000 Contract Structure and Term

2.001 Contract Term

This Contract is for a period beginning March 25, 2010 through June 30, 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 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 Work plan. Exact quantities to be purchased are unknown, however, the Contractor will 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 entire contract, which consists of the State of Michigan Department of Technology, Management and Budget Purchasing Operations Contract; the AASHTO Master License Software Agreement; and the AASHTO License Software Supplemental Agreement, 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 a conflict between the State's and the Vendor's terms, conditions and attachments, all documents comprising this contract carry equal weight.



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 Technology, Management and Budget, Purchasing Operations and DIT/MDOT] (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:

Attention: Steve Motz
Department of Technology, Management and Budget
Purchasing Operations
Mason Bldg, 2nd Floor
530 W. Allegan
Lansing, MI 48909
Email: motzs@michigan.gov
Phone: (517)241-3215

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:

Mark Lawrence
Department of Information Technology
525 W, Allegan Street, 1st Floor North
Constitution Hall,
Lansing, MI 48913
Email: LawrenceM1@michigan.gov
Phone: (517)241-1640

2.023 Project Manager

The following individual will oversee the project:

Kevin Fox
Department MDIT / Project Manager
(Address) Construction and Technology Building
Email foxk@michigan.gov
Phone: 517 322-6223

2.024 RESERVED - Change Requests

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: Steve Motz
PO Box 30026
530 West Allegan, 2nd Floor
Lansing, Michigan 48909

And
Mark Lawrence
Department of Information Technology
525 W, Allegan Street, 1st Floor North
Constitution Hall,
Lansing, MI 48913

Contractor:

Angelique Williams, AASHTOWare Business Manager
444 N. Capitol Street, N.W., Suite 249
Washington, DC 20001
(202) 624-5808
Fax 202-624-5469
angelw@ashto.org

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



2.026 Binding Commitments

Representatives of Contractor must have the authority to make binding commitments on Contractor's behalf within the bounds set forth in 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 will be solely and entirely responsible for its acts and the acts of its agents, employees, servants and Subcontractors during the performance of the Contract.

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 must notify the State in writing at least 90 days before the assignment. The Contractor also must provide the State with adequate information about the assignee within a reasonable amount of time before the assignment for the State to determine whether to approve the assignment.

2.030 General Provisions

2.031 Media Releases

News releases (including promotional literature and commercial advertisements) pertaining to 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 must obtain and pay any associated costs for all required governmental permits, licenses and approvals for the delivery, installation and performance of the Services. The State must pay for all costs and expenses incurred in obtaining and maintaining any necessary easements or right of way.

2.034 Website Incorporation

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

2.035 Future Bidding Preclusion

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

2.036 Freedom of Information

All information in any proposal submitted to the State by Contractor and this Contract is subject to the provisions of the Michigan Freedom of Information Act, 1976 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 RESERVED - Fixed Prices for Services/Deliverables

2.042 RESERVED - Adjustments for Reductions in Scope of Services/Deliverables

2.043 RESERVED - Services/Deliverables Covered

2.044 Invoicing and Payment – In General

- (a) Each Work plan 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 payment amounts.
- (b) 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.
- (c) All 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 Technology, Management & Budget. This activity will occur only upon the specific written direction from Purchasing Operations.

**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

The Services and Deliverables provided to the State under this Contract are not subject to sales or use tax.

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.

2.062 RESERVED - Contractor Key Personnel**2.063 RESERVED - Re-assignment of Personnel at the State's Request****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 Work plan. 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 will 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 (Not Applicable to the Purchase of Service Units)

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 will provide the Services/Deliverables directly or through its affiliates, subsidiaries, subcontractors or resellers. Regardless of the entity providing the Service/Deliverable, the Contractor will 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 must 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 (Not Applicable to the Purchase of Service Units)**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 RESERVED - State Consent to delegation**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 will be



the responsibility of Contractor, and Contractor shall remain responsible for the performance of its Subcontractors to the same extent as if Contractor had not subcontracted such performance. Contractor shall make all payments to Subcontractors or suppliers of Contractor. Except as otherwise agreed in writing by the State and Contractor, the State will not be obligated to direct payments for the Services other than to Contractor. The State's written approval of any Subcontractor engaged by Contractor to 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 Work plans and other Contract Exhibits.

2.082 Facilities

The State must designate space as long as it is available and as provided in the Work plan, to house the Contractor's personnel whom the parties agree will perform the Services/Deliverables at State facilities (collectively, the "State Facilities"). The Contractor must have reasonable access to, and unless agreed otherwise by the parties in writing must observe and comply with all rules and regulations relating to each of the State Facilities (including hours of operation) used by the Contractor in the course of providing the Services. Contractor agrees that it will not, without the prior written consent of the State, use any State Facilities or access any State information systems provided for the Contractor's use, or to which the Contractor otherwise gains access in the course of performing the Services, for any purpose other than providing the Services to the State.

2.090 Security

2.091 Background Checks

On a case-by-case basis, the State may investigate the Contractor's personnel before they may have access to State facilities and systems. The scope of the background check is at the discretion of the State and the results will be used to determine Contractor personnel eligibility for working within State facilities and systems. The investigations will include Michigan State Police Background checks (ICHAT) and may include the National Crime Information Center (NCIC) Finger Prints. Proposed Contractor personnel may be required to complete and submit an RI-8 Fingerprint Card for the NCIC Finger Print Check. Any request for background checks will be initiated by the State and will be reasonably related to the type of work requested.

All Contractor personnel 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 will present these documents to the prospective employee before the Contractor presents the individual to the State as a proposed resource. Contractor staff will be expected to comply with all Physical Security procedures in place within the facilities where they are working.



2.092 Security Breach Notification

If the Contractor breaches this Section, the Contractor must (i) promptly cure any deficiencies and (ii) comply with any applicable federal and state laws and regulations pertaining to unauthorized disclosures. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor must report to the State in writing any use or disclosure of Confidential Information, whether suspected or actual, other than as provided for by 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 will contact the Department of Technology, 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 will continue to treat cardholder data as confidential upon contract termination.

The Contractor will provide the Department of Technology, Management and Budget, Financial Services documentation showing PCI Data Security certification has been achieved. The Contractor will advise the Department of Technology, 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 will 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 must mean all non-public proprietary information of Contractor (other than Confidential Information of the State as defined below), which is marked confidential, restricted, proprietary, or with a similar designation; provided that all Software and Documentation provided by Contractor under this Contract shall be "Confidential Information" of Contractor without further marking. "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 will each use at least the same degree of care to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication or dissemination of its own confidential information of like character, but in no event less than reasonable care. Neither Contractor nor the State will (i) make any use of the Confidential Information of the other except as contemplated by 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 must 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 RESERVED - Inspection of Work Performed

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 must 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 will 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 must pay all of the reasonable costs of the audit.

2.120 Warranties

2.121 RESERVED - Warranties and Representations

2.122 RESERVED - Warranty of Merchantability

2.123 RESERVED - Warranty of Fitness for a Particular Purpose

2.124 Warranty of Title

All goods provided by Contractor shall be delivered free from any security interest, lien, or encumbrance of which the State, at the time of contracting, has no knowledge. Goods provided by Contractor, under this Contract, shall be delivered free of any rightful claim of any third person by of infringement or the like.

2.125 RESERVED - Equipment Warranty

2.126 RESERVED - Equipment to be New

2.127 Prohibited Products

The State will not accept salvage, distressed, outdated or discontinued merchandise. Shipping of such merchandise to any State agency, as a result of an order placed against the Contract, shall be considered default by the Contractor of the terms and conditions of the Contract and may result in cancellation of the Contract by the State. The brand and product number offered for all items shall remain consistent for the term of the Contract, unless Purchasing Operations has approved a change order pursuant to **Section 2.024**.

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 agrees to provide proof of insurance upon request.

2.132 Subcontractor Insurance Coverage

Except where the State has approved in writing a Contractor subcontract with other insurance provisions, Contractor must require all of its Subcontractors under this Contract to purchase and maintain the insurance coverage as described in this Section for the Contractor in connection with the performance of work by those Subcontractors. Alternatively, Contractor may include any Subcontractors under Contractor’s insurance on the coverage required in this Section. 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

The Contractor agrees to provide proof of insurance upon request.

2.140 Indemnification

2.141 RESERVED - General Indemnification

2.142 RESERVED - Code Indemnification

2.143 RESERVED - Employee Indemnification

2.144 RESERVED - Patent/Copyright Infringement Indemnification

2.145 RESERVED - Continuation of Indemnification Obligation

2.146 RESERVED - Indemnification Procedures

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) – Deleted
- (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. License fees are not refundable.
- (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. License fees are not refundable.

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. License fees are not refundable.

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 Work plans, 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). License fees are not refundable.
- (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. License fees are not refundable.
- (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. License fees are not refundable.

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. License fees are not refundable.



2.157 Rights and Obligations upon Termination

- (a) If the State terminates this Contract for any reason, the Contractor must (a) stop all work as specified in the notice of termination, (b) take any action that may be necessary, or that the State may direct, for preservation and protection of Deliverables or other property derived or resulting from this Contract that may be in Contractor's possession, (c) return all materials and property provided directly or indirectly to Contractor by any entity, agent or employee of the State, (d) transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables intended to be transferred to the State at the termination of the Contract and which are resulting from the Contract (which must be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of the items included compensation to Contractor for the provision of warranty services in respect of the materials), and (e) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract. License fees are not refundable.
- (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. License fees are not refundable.
- (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 Work plan 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 will provide the State with written notice of the breach and a time period (not less than 30 days) to cure the breach. The Notice of Breach and opportunity to cure is inapplicable for successive and repeated breaches.

The Contractor may terminate this Contract if the State (i) materially breaches its obligation to pay the Contractor undisputed amounts due and owing under this Contract, (ii) breaches its other obligations under this Contract to an extent that makes it impossible or commercially impractical for the Contractor to perform the Services, or (iii) does not cure the breach within the time period specified in a written notice of breach. But the Contractor must discharge its obligations under **Section 2.160** before it terminates the Contract.

2.170 RESERVED - Transition Responsibilities

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 must immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of the stop work order, the State must either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order as provided in **Section 2.130**.

2.182 Cancellation or Expiration of Stop Work Order

The Contractor must resume work if the State cancels a Stop Work Order or if it expires. The parties will agree upon an equitable adjustment in the delivery schedule, 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**. License fees are not refundable.

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. License fees are not refundable.

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 Work plan 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 must submit a letter, together with all data supporting the claims, executed by Contractor's Contract Administrator or the Contract Administrator's designee certifying that (a) the claim is made in good faith, (b) the amount claimed accurately reflects the adjustments in the amounts payable to Contractor or the time for Contractor's performance for which Contractor believes the State is liable and covers all costs of every type to which Contractor is entitled from the occurrence of the claimed event, and (c) the claim and the supporting data are current and complete to Contractor's best knowledge and belief.

2.192 Informal Dispute Resolution

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

- (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 will not be subject to the provisions of **Section 2.192** is where a party makes a good faith determination that a breach of the terms of 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 must comply with the Department of Civil Services Rule 2-20 regarding Workplace Safety and Rule 1-8.3 regarding Discriminatory Harassment. In addition, the Contractor must comply with Civil Service regulations and any applicable agency rules provided to the Contractor. For Civil Service Rules, see <http://www.mi.gov/mdcs/0,1607,7-147-6877---,00.html>.



2.204 Prevailing Wage

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.

The Contractor's liability for damages to the State is limited to the value of the Contract.
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 must disclose any material criminal litigation, investigations or proceedings involving the Contractor (and each Subcontractor) or any of its officers or directors or any litigation, investigations or proceedings under the Sarbanes-Oxley Act. In addition, each Contractor (and each Subcontractor) must notify the State of any material civil litigation, arbitration or proceeding which arises during the term of 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 must disclose in writing to the Contract Administrator any litigation, investigation, arbitration or other proceeding (collectively, "Proceeding") within 30 days of its occurrence. Details of settlements 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 must 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 Work plans 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 must make the following notifications in writing:
 - (1) Within 30 days of Contractor becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor must notify DMB Purchasing Operations.
 - (2) Contractor must also notify DMB Purchasing Operations within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.
 - (3) Contractor must also notify DMB 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, may take possession of the "Work in Process" and finish the Works in Process by whatever appropriate method the State may deem expedient if:

- (a) the Contractor files for protection under the bankruptcy laws;
- (b) an involuntary petition is filed against the Contractor and not removed within 30 days;
- (c) the Contractor becomes insolvent or if a receiver is appointed due to the Contractor's insolvency;
- (d) the Contractor makes a general assignment for the benefit of creditors; or
- (e) the Contractor or its affiliates are unable to provide reasonable assurances that the Contractor or its affiliates can deliver the services under this Contract.



Contractor will fix appropriate notices or labels on the Work in Process to indicate ownership by the State. To the extent reasonably possible, materials and Work in Process must be stored separately from other stock and marked conspicuously with labels indicating ownership by the State.

2.240 Performance

2.241 Time of Performance

- (a) Contractor must use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables according to the time schedules contained in the Work plans and other Exhibits governing the work, and with professional quality.
- (b) Without limiting the generality of **Section 2.241**, Contractor must notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and must inform the State of the projected actual delivery date.
- (c) If the Contractor believes that a delay in performance by the State has caused or will cause the Contractor to be unable to perform its obligations according to specified Contract time periods, the Contractor must notify the State in a timely manner and must use commercially reasonable efforts to perform its obligations according to the Contract time periods notwithstanding the State's failure. Contractor will not be in default for a delay in performance to the extent the delay is caused by the State.

2.242 RESERVED - Service Level Agreement (SLA)

2.243 RESERVED - Liquidated Damages

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 Work plan without liability to Contractor as of a date specified by the State in a written notice of termination to the Contractor, except to the extent that the State must pay for Services/Deliverables provided through the date of termination.



The Contractor will not have the right to any additional payments from the State as a result of any Excusable Failure occurrence or to payments for Services not rendered/Deliverables not provided as a result of the Excusable Failure condition. Defaults or delays in performance by Contractor which are caused by acts or omissions of its Subcontractors will not relieve Contractor of its obligations under 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 RESERVED - Delivery of Deliverables

2.252 RESERVED - Contractor System Testing

2.253 RESERVED - Approval of Deliverables, In General

2.254 RESERVED - Process for Approval of Written Deliverables

2.255 RESERVED - Process for Approval of Custom Software Deliverables

2.256 RESERVED - Final Acceptance

2.260 Ownership

2.261 RESERVED - Ownership of Work Product by State

2.262 RESERVED - Vesting of Rights

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 will not use the State's data for any purpose other than providing the Services, nor will any part of the State's data be disclosed, sold, assigned, leased or otherwise disposed of to the general public or to specific third parties or commercially exploited by or on behalf of 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 will not possess or assert any lien or other right against the State's data. Without limiting the generality of this Section, the Contractor must only use personally identifiable information as strictly necessary to provide the Services and must disclose the information only to its employees who have a strict need-to-know the information. The Contractor must comply at all times with all laws and regulations applicable to the personally identifiable information.

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 will 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 RESERVED - Existing Technology Standards

2.272 Acceptable Use Policy

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

2.273 Systems Changes

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

2.280 Extended Purchasing

2.281 RESERVED - MiDEAL (Michigan Delivery Extended Agreements Locally

2.282 RESERVED - State Employee Purchases

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 must 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 must 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 must 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 must 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

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; if any additional software is required in order for the Deliverables to meet the requirements of this Contract, such software shall be provided to the State by Contractor at no additional charge (except where agreed upon and specified in a Work plan or Contract Change Notice). The attachment also identifies certain items of software to be provided by the State.

2.302 Hardware

A list of the items of hardware the State is required to purchase for execution the Contract is attached. The list includes all hardware required to complete the Contract and make the Deliverables operable; if any additional hardware is required in order for the Deliverables to meet the requirements of this Contract, such hardware

shall be provided to the State by Contractor at no additional charge (except where agreed upon and specified in a Contract Change Notice). The attachment also identifies certain items of hardware to be provided by the State.

2.310 Software Warranties

- 2.311 RESERVED - Performance Warranty**
- 2.312 RESERVED - No Surreptitious Code Warranty**
- 2.313 RESERVED - Calendar Warranty**
- 2.314 RESERVED - Third-party Software Warranty**
- 2.315 RESERVED - Physical Media Warranty**

2.320 Software Licensing

- 2.321 RESERVED - Cross-License, Deliverables Only, License to Contractor**
- 2.322 RESERVED - Cross-License, Deliverables and Derivative Work, License to Contractor**
- 2.323 RESERVED - License Back to the State**
- 2.324 RESERVED - License Retained by Contractor**

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 RESERVED - Definition**
- 2.332 RESERVED - Delivery of Source Code into Escrow**
- 2.333 RESERVED - Delivery of New Source Code into Escrow**
- 2.334 RESERVED - Verification**
- 2.335 RESERVED - Escrow Fees**
- 2.336 RESERVED - Release Events**
- 2.337 RESERVED - Release Event Procedures**
- 2.338 RESERVED - License**
- 2.339 RESERVED - Derivative Works**