Form No. DTMB-3524 (Created 4/2012)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: No further payment will be made to the previous Contractor name and or number.

**STATE OF MICHIGAN**
**DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET**
**PROCUREMENT**
**P.O. BOX 30026, LANSING, MI 48909**
**OR**
**530 W. ALLEGAN, LANSING, MI 48913**

# CHANGE NOTICE

## CONTRACT NO. 071B0200292

**hereafter referred as**

## CONTRACT NO. 071B5500044

**between**

## THE STATE OF MICHIGAN

**and**

| NAME & ADDRESS OF CONTRACTOR (AFTER ASSIGNMENT): | PRIMARY CONTACT | EMAIL |
|---|---|---|
| Baker Tilly Virchow Krause, LLP<br>1650 Market Street, Suite 4500<br>Philadelphia, PA 19103 | Mark Laccetti | Mark.laccetti@bakertilly.com |
| | TELEPHONE | NEW CONTRACTOR #, MAIL CODE |
| | (215) 557-2217 | |

| PREVIOUS NAME & ADDRESS OF CONTRACTOR: | PRIMARY CONTACT | EMAIL |
|---|---|---|
| Parentebeard, LLC<br>1650 Market Street, Suite 4500<br>Philadelphia, PA 19103 | Mark Laccetti | mark.laccetti@parentebeard.com |
| | TELEPHONE | PREVIOUS CONTRACTOR #, MAIL CODE |
| | (215) 557-2217 | |

| DESCRIPTION OF CHANGE NOTICE: |
|---|
| **The Contractor requested an assignment of this Contract to Baker Tilly Virchow Krause, LLP. Due to the internal systems related to the release of Contractor payments, a new Contract number must be assigned. The new Contract Number is** 071B5500044**. The Contractual obligations and rights of Contract Number 071B5500044 are assigned to Baker Tilly Virchow Krause, LLP.**<br><br>**THIS CHANGE IS EFFECTIVE:** December 1, 2014 |
| $505,821.00 **REMAINING ON CONTRACT #** 071B0200292 **TO BE TRANSFERRED TO CONTRACT #** 071B5500044. |

**Form No. DTMB-3524 (Created 4/2012)**
Change of Contractor Name or Tax Identification Number

**Contract No.** 071B0200292 **hereafter referred as Contract No.** 071B5500044

| STATE CONTACTS | AGENCY | NAME | PHONE | EMAIL |
|---|---|---|---|---|
| CONTRACT COMPLIANCE INSPECTOR: | DIFS | Karen Sage | (517)241-6347 | sagek@michigan.gov |
| BUYER: | DTMB | Mary Ostrowski | (517)284-7021 | ostrowskim@michigan.gov |

| **CONTRACT SUMMARY:** | | | |
|---|---|---|---|
| DESCRIPTION: (Descriptive Contract Title (Not always the same language as provided in MAIN) | | | |
| Out of State Insurance Examinations – Department of Insurance and Financial Examinations | | | |
| INITIAL TERM | EFFECTIVE DATE | INITIAL EXPIRATION DATE | AVAILABLE OPTIONS |
| Three years | August 10, 2010 | August 9, 2013 | Two, One Year Options |
| PAYMENT TERMS | F.O.B | SHIPPED | SHIPPED FROM |
| N/A | N/A | N/A | N/A |
| ALTERNATE PAYMENT OPTIONS: | | | AVAILABLE TO MiDEAL PARTICIPANTS |
| ☐ P-card ☐ Direct Voucher (DV) ☐ Other | | | ☐ YES ☒ NO |
| MINIMUM DELIVERY REQUIREMENTS: | | | |
| N/A | | | |

| **FOR THE CONTRACTOR:** | **FOR THE STATE:** |
|---|---|
| Baker Tilly Virchow Krause, LLP | |
| Firm Name | Signature |
| | Sharon Walenga-Maynard, Sourcing Director |
| Authorized Agent Signature | Name/Title |
| | DTMB Procurement |
| Authorized Agent (Print or Type) | Enter Name of Agency |
| Date | Date |

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

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

# CHANGE NOTICE NO. 3

to

# CONTRACT NO. 071B0200292

between

# THE STATE OF MICHIGAN

and

| NAME & ADDRESS OF CONTRACTOR: | PRIMARY CONTACT | EMAIL |
|---|---|---|
| Parentebeard, LLC<br>1650 Market Street, Suite 4500<br>Philadelphia, PA 19103 | Mark Laccetti | mark.laccetti@parentebeard.com |
| | TELEPHONE | CONTRACTOR #, MAIL CODE |
| | (215) 557-2217 | |

| STATE CONTACTS | AGENCY | NAME | PHONE | EMAIL |
|---|---|---|---|---|
| CONTRACT COMPLIANCE INSPECTOR | DIFS | Karen Sage | (517) 241-6347 | sagek@michigan.gov |
| BUYER | DTMB | Mary Ostrowski | (517) 284-7021 | ostrowskim@michigan.gov |

## CONTRACT SUMMARY:

Out of State Insurance Examination – Department of Insurance and Financial Services

| INITIAL EFFECTIVE DATE | INITIAL EXPIRATION DATE | INITIAL AVAILABLE OPTIONS | EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW |
|---|---|---|---|
| August 10, 2010 | August 9, 2013 | 2, 1 yr. options | August 9, 2014 |
| PAYMENT TERMS | F.O.B | SHIPPED | SHIPPED FROM |
| N/A | N/A | N/A | N/A |

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

MINIMUM DELIVERY REQUIREMENTS:

N/A

## DESCRIPTION OF CHANGE NOTICE:

| EXTEND CONTRACT EXPIRATION DATE | EXERCISE CONTRACT OPTION YEAR(S) | EXTENSION BEYOND CONTRACT OPTION YEARS | LENGTH OF OPTION/EXTENSION | EXPIRATION DATE AFTER CHANGE |
|---|---|---|---|---|
| ☐ No ☒ Yes | ☒ | ☐ | One Year | August 9, 2015 |

| VALUE/COST OF CHANGE NOTICE: | ESTIMATED REVISED AGGREGATE CONTRACT VALUE: |
|---|---|
| $0.00 | $1,769,494.00 |

**Effective August 10, 2014, the second option year available on this Contract is hereby exercised. The revised Contract expiration date is August 9, 2015.**

**The DTMB Buyer has been updated to Mary Ostrowski.**

**All other terms, conditions, specifications and pricing remain unchanged.**

**Per vendor and agency agreement, and DTMB Procurement approval.**

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

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

# CHANGE NOTICE NO. 2

to

# CONTRACT NO. 071B0200292

between

# THE STATE OF MICHIGAN

and

| NAME & ADDRESS OF CONTRACTOR: | PRIMARY CONTACT | EMAIL |
|---|---|---|
| Parentebeard, LLC<br>1650 Market Street, Suite 4500<br>Philadelphia, PA 19103 | Mark Laccetti | mark.laccetti@parentebeard.com |
| | TELEPHONE | CONTRACTOR #, MAIL CODE |
| | (215) 557-2217 | |

| STATE CONTACTS | AGENCY | NAME | PHONE | EMAIL |
|---|---|---|---|---|
| CONTRACT COMPLIANCE INSPECTOR | DIFS | Karen Sage | (517) 241-6374 | sagek@michigan.gov |
| BUYER | DTMB | Don Mandernach | (517) 241-7233 | mandernachd@michigan.gov |

## CONTRACT SUMMARY:

Out of State Insurance Examination – Department of Insurance and Financial Services

| INITIAL EFFECTIVE DATE | INITIAL EXPIRATION DATE | INITIAL AVAILABLE OPTIONS | EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW |
|---|---|---|---|
| August 10, 2010 | August 9, 2013 | 2, 1 yr. options | August 9, 2013 |
| PAYMENT TERMS | F.O.B | SHIPPED | SHIPPED FROM |
| N/A | N/A | N/A | N/A |

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

MINIMUM DELIVERY REQUIREMENTS:

N/A

## DESCRIPTION OF CHANGE NOTICE:

| EXTEND CONTRACT EXPIRATION DATE | EXERCISE CONTRACT OPTION YEAR(S) | EXTENSION BEYOND CONTRACT OPTION YEARS | LENGTH OF OPTION/EXTENSION | EXPIRATION DATE AFTER CHANGE |
|---|---|---|---|---|
| ☐ No ☒ Yes | ☒ | ☐ | One Year | August 9, 2014 |

| VALUE/COST OF CHANGE NOTICE: | ESTIMATED REVISED AGGREGATE CONTRACT VALUE: |
|---|---|
| $0.00 | $1,769,494.00 |

**The first of two available option years will be utilized per agency request. All other terms, conditions, specifications and pricing remain unchanged.**

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

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

July 2, 2012

# CHANGE NOTICE NO. 1

to

# CONTRACT NO. 071B0200292

between

# THE STATE OF MICHIGAN

and

| NAME & ADDRESS OF CONTRACTOR: | PRIMARY CONTACT | EMAIL |
|---|---|---|
| **Parentebeard, LLC** | **Mark Laccetti** | **Mark.laccetti@parentebeard.com** |
| **1650 Market Street, Suite 4500** | TELEPHONE | CONTRACTOR #, MAIL CODE |
| **Philadelphia, PA 19103** | **(215) 557-2217** | |

| STATE CONTACTS | AGENCY | NAME | PHONE | EMAIL |
|---|---|---|---|---|
| CONTRACT COMPLIANCE INSPECTOR: | **LARA** | **Rhonda Mackie** | **(517) 335-1732** | **mackier@michigan.gov** |
| BUYER: | **DTMB** | **Brandon Samuel** | **(517) 241-1218** | **samuelb@michigan.gov** |

| CONTRACT SUMMARY: | | | |
|---|---|---|---|
| DESCRIPTION: **Out of State Insurance Examination - LARA** | | | |
| INITIAL EFFECTIVE DATE | INITIAL EXPIRATION DATE | AVAILABLE OPTIONS | CURRENT EXPIRATION DATE |
| **August 10, 2010** | **August 9, 2013** | **2, 1Yr. Options** | **August 9, 2013** |
| PAYMENT TERMS | F.O.B | SHIPPED | SHIPPED FROM |
| **N/A** | **N/A** | **N/A** | **N/A** |
| ALTERNATE PAYMENT OPTIONS: | | | AVAILABLE TO MiDEAL PARTICIPANTS |
| ☐ P-card ☐ Direct Voucher (DV) ☐ Other | | | ☐ YES ☒ NO |
| MINIMUM DELIVERY REQUIREMENTS: | | | |
| **N/A** | | | |

| DESCRIPTION OF CHANGE NOTICE: | | |
|---|---|---|
| OPTION EXERCISED: ☒ NO ☐ YES | IF YES, EFFECTIVE DATE OF CHANGE: | NEW EXPIRATION DATE: |
| **Effective July 25, 2012, this Contract is hereby INCREASED by $769,494.00. The buyer has changed to Brandon Samuel.**<br><br>**All other terms, conditions, specifications, and pricing remain unchanged.**<br><br>**Per agency request, DTMB Procurement approval, and the approval of the State Administrative Board dated July 24, 2012.** | | |
| VALUE/COST OF CHANGE NOTICE: | **$769,494.00** | |
| ESTIMATED REVISED AGGREGATE CONTRACT VALUE: | **$1,769,494.00** | |

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

**STATE OF MICHIGAN**
**DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET** **August 9, 2010**
**PURCHASING OPERATIONS**
**P.O. BOX 30026, LANSING, MI 48909**
**OR**
**530 W. ALLEGAN, LANSING, MI 48933**

# NOTICE
# OF
# CONTRACT NO. 071B0200292
# between
# THE STATE OF MICHIGAN
# and

| | |
|---|---|
| NAME & ADDRESS OF CONTRACTOR<br>**Parentebeard LLC**<br>**1650 Market Street, Suite 4500**<br>**Philadelphia, PA 19103**<br>**Mark.laccetti@parentebeard.com** | TELEPHONE Mark Laccetti<br>**(215) 557-2217**<br>CONTRACTOR NUMBER/MAIL CODE<br>BUYER/CA (517) 335-6481<br>**Adam Koenigsknecht** |
| Contract Compliance Inspector: Rhonda Mackie (517) 335-1732<br>**Out of State Insurance Examination - DELEG** | |
| CONTRACT PERIOD: **3 yrs. + 2 one-year options** From: **August 10, 2010** To: **August 9, 2013** | |
| TERMS<br>**N/A** | SHIPMENT<br>**N/A** |
| F.O.B.<br>**N/A** | SHIPPED FROM<br>**N/A** |
| MINIMUM DELIVERY REQUIREMENTS<br>**N/A** | |
| MISCELLANEOUS INFORMATION: | |

**The terms and conditions of this Contract are those of ITB #071I0200069, this Contract Agreement and the vendor's quote. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.**

**Estimated Contract Value: $1,000,000.00**

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

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

# CONTRACT NO. 071B0200292
## between
## THE STATE OF MICHIGAN
## and

| | |
|---|---|
| NAME & ADDRESS OF CONTRACTOR<br>**Parentebeard LLC**<br>**1650 Market Street, Suite 4500**<br>**Philadelphia, PA 19103**<br>**Mark.laccetti@parentebeard.com** | TELEPHONE Mark Laccetti<br>**(215) 557-2217**<br>CONTRACTOR NUMBER/MAIL CODE<br>BUYER/CA (517) 335-6481<br>**Adam Koenigsknecht** |
| Contract Compliance Inspector: Rhonda Mackie (517) 335-1732<br>**Out of State Insurance Examination - DELEG** | |
| CONTRACT PERIOD: **3 yrs. + 2 one-year options** From: **August 10, 2010** To: **August 9, 2013** | |
| TERMS<br>**N/A** | SHIPMENT<br>**N/A** |
| F.O.B.<br>**N/A** | SHIPPED FROM<br>**N/A** |
| MINIMUM DELIVERY REQUIREMENTS<br>**N/A** | |
| MISCELLANEOUS INFORMATION:<br>**The terms and conditions of this Contract are those of ITB #071I0200069, this Contract Agreement and the vendor's quote. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.**<br><br>**Estimated Contract Value: $1,000,000.00** | |

**THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the ITB No. 071I0200069.**

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

| **FOR THE CONTRACTOR:** | **FOR THE STATE:** |
|---|---|
| **Parentebeard, LLC**<br>Firm Name | Signature |
| Authorized Agent Signature | **William C. Walsh, Buyer**<br>Name/Title |
| Authorized Agent (Print or Type) | **Commodities Division, Purchasing Operations**<br>Division |
| Date | Date |

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Attachment A, Pricing

## DEFINITIONS

**24x7x365** means 24 hours a day, seven (7) days a week, and 365 days a year (including the 366th day in a leap year).

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

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

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

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

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

**CCI** means Contract Compliance Inspector.

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

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

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

**DTMB** means the Michigan Department of Technology, Management and Budget.

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

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

**Incident** means any interruption in any function performed for the benefit of the State.

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

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

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

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

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

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

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

**RFQ** means a Request for Quotation to solicit proposals for services.

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

**SLA** means Service Level Agreement.

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

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

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

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

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

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

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

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

## Article 1 – Statement of Work (SOW)

### *1.010 Project Identification*

**1.011 Project**
This is a Contract for the Michigan Department of Energy, Labor and Economic Growth (DELEG), Office of Financial and Insurance Regulation (OFIR), for examination of insurance company financial stability and compliance with Michigan insurance laws, regulations, bulletins and National Association of Insurance Commissioners (NAIC) requirements.

**1.012 Background – Deleted/Not Applicable**

### *1.020 Scope of Work and Deliverables*

**1.021 In Scope**
Perform insurance company examinations and analysis as required by individual OFIR RFQs to determine solvency, compliance with Michigan insurance laws, regulations, bulletins and NAIC requirements. Travel to company sites as necessary to complete examinations and analysis.

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

A. Project Assignment:
OFIR will prepare a written RFQ that details the company involved and the work to be performed by Contractor.

Some project assignments will include several members within an insurance holding company that must be examined at the same time. Each RFQ from OFIR will include the following information:

1. Cover Sheet:
   a. Contractor work statement due date.
   b. Name of company or companies to be analyzed/examined.
   c. Period of company operation time to be reviewed by this analysis/examination.
   d. Expected end work product, i.e., agreed-upon procedures.
   e. Criteria for determining acceptance of deliverables and final acceptance criteria.

2. Excerpts from Company's Annual Statement or Quarterly Statement if Annual Statement is not available:
   a. Appointments can be made to review the entire annual statement or quarterly statements or other documents that are available to the public by contacting OFIR.

B. Contractor Response:
Contractor will have approximately three (3) weeks from date RFQ is received to submit a work statement in response to an RFQ. Contractor must respond to the RFQ with a quotation and a work plan. (In detailing costs, Contractor must not exceed the hourly rates included in this Contract.)

1. Responses to RFQs must include the following:

   a. Assignment Scope: Statement of the project assignment.

   b. Dates by which analysis/examination of the company will begin and be completed.

   c. Description of the services (see item 1.022-B.2 below), including:
      1) Contractor's approach to completing the financial analysis or completing a statutory examination of the company identified in the RFQ (to include a history of the company, particular industry considerations, any significant issues raised by OFIR, etc.).
      2) Technical work plan.
      3) End product of the assignment (e.g. all examination work-papers, including a finalized examination report, following NAIC guidelines, etc.).
      4) Individual staff assigned to project.

d. Assigned staff information:
   1) Name and title.
   2) Background and credentials.
   3) Total amount of experience relevant to completing financial examinations.
   4) Specific experience relevant to the type of company being examined.
      (Not necessary to include individual resumes, if included in Contractor's proposal under which this Agreement was awarded.).

   NOTE: Contractor's staff must not be affiliated or associated (either financially or contractually) with an entity being examined and that there be no financial or contractual relationship, either written or oral, with an entity being examined and Contractor, during the life of this Agreement. Failure by Contractor to comply with this provision will result in the cancellation of this Contract.

e. Detail of costs:
   1) Staff assigned to project.
   2) Estimated hours assigned for each of the project-staff members.
   3) The hourly rate per staff person. The hourly rate must also include travel costs.*
   4) Total projected cost for examination.

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

2. FINANCIAL EXAMINATIONS ONLY - Responses to an RFQ must include the following:

   a. Contractor must develop a specific examination plan for the Company using the NAIC Examiners Handbook process, which must be jointly approved by Contractor's partner and manager, Examiner-in-Charge, and its Chief Examiner. Contractor's examination plan must include:

      1) A description of the standard examination tests which Contractor will use to determine the solvency of the company.

      2) A description of tests which Contractor will use to determine compliance with Michigan laws, regulations and bulletins and an elapsed time and worker-hours budget.

      3) The specific examination dates, from start date to completion date, without any delays or gaps.

      4) All the individual staff assigned to the examination, the areas each individual will be assigned to the examination, and the estimated number of hours each individual will participate in the examination. (Note that this description **must** reflect that the examination's senior level auditor is scheduled on-site continuously throughout the entire examination and that the senior auditor must have previous experience in auditing insurance companies).

3. Contractor will be held to the price quoted. No additional funds will be approved and paid to Contractor for delays in the examination because of the company delays providing needed examination information unless Contractor can provide sufficient documentation to demonstrate the delays. The delays must be in all areas of information or a significant portion of the information such that Contractor's staff is not able to remain productive. Also, Contractor must be able to demonstrate that its staff could not be temporarily reassigned during any such lulls in receiving documentation. OFIR does not anticipate any delays and would work with Contractor and company to ensure delays will not occur.

   a. OFIR will pay for all Financial Examination services by Contractor that are provided according to the terms of this Contract. No charges shall be submitted to the regulated insurance company being examined, unless otherwise directed by OFIR.

b. These financial examinations must meet the NAIC accreditation standards and other standards of the NAIC for using outside firms to perform examinations. [NAIC requires the use of a CPA on an examination, where the insurer is licensed in more than one (1) state, and other additional requirements will vary by examination and according to each state's circumstances. While there exists many different levels of service that a CPA may provide an insurance department, the use of a CPA in an examination is typically accomplished through an "agreed-upon procedures engagement."] Therefore, in order to comply with NAIC standards many of the examinations conducted under this Contract will be completed using agreed-upon procedures. OFIR will make the final determination whether agreed-upon procedures are necessary and acceptable.

C. Service Requirements

1. Financial Examinations
If awarded the financial examination (project) assignment, Contractor must carry out this project under the direction and control of DELEG, and OFIR, and must:

a. Perform specific examination tests identified in the initial examination plan and other examination tests as deemed necessary throughout the course of the examination to determine solvency and compliance with Michigan insurance laws, regulations and bulletins. Contractor must review the tests performed and the results found with an OFIR examiner on request.

b. Work in conjunction with OFIR consulting actuary firms. Contractor will be responsible for testing the underlying data used by the consulting actuary for accuracy and completeness.

c. Use, if available, the company's independent Certified Public Accountant (CPA) work-papers to the greatest extent possible without compromising Contractor's responsibility to perform the necessary tests as defined in the work statement and approved examination plan.

d. Document all work performed and examination findings in examination work-papers, ensuring all work-papers generated during the examination meet its firm's work-paper quality standards, the NAIC Examiners Handbook standards, and OFIR work-paper standards (all work-papers will be reviewed and must be approved by the Examiner-in-Charge (EIC) and Chief Examiner). These work-papers shall become the property of OFIR after the examination.

e. Be responsible for bringing its own supplies and equipment. The only items OFIR will request of the company being examined are access to a telephone, facsimile, and a photocopier (as the telephone may or may not have a dedicated line for use with computers).

f. ***Not*** contact the company prior to the on-site examination without written authorization from OFIR, even though it is OFIR's practice to give companies at least 30 days notice prior to beginning an on-site examination.

g. Assign staff who are Certified Public Accountants familiar with Michigan insurance laws, regulations, bulletins and NAIC requirements supervising the examination. When performing an examination of Canadian insurers, Contractor may assign chartered accountants as staff from its Canadian office(s).

h. Identify any items of noncompliance with State statutes and regulations, whether financial or non-financial, which become apparent during the examination. Also, Contractor must identify any findings, again whether financial or non-financial, where the company could improve its operations, controls or reporting. OFIR will make the final determination about which items should then be discussed with the company and then whether that item should be included in the final report or management letter.

i. Work with, and under the direction of the EIC, to prepare a draft copy of the examination report and management letter on the company. The management letter must include all findings that are not material to the company's financial solvency or code violations, but are areas where the company could improve its operations, controls or reporting.

j. Submit examination findings and work-papers to OFIR within 10 calendar days following the completion of the on-site examination of the company unless otherwise agreed to by OFIR. If Contractor prepares a draft report and management letter, then the report and management letter must conform to reporting guidelines, as published by the NAIC, and OFIR policies and procedures.

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

l. Hold a meeting with OFIR and the company being examined to discuss any findings or comments arising from the examination After the meeting, adjust the draft report and management letter based on the meeting and subsequent information received by OFIR and submit the final draft report and management letter to OFIR within 10 calendar days of approval of the draft by the EIC.

m. Attend final exit conference meetings at the OFIR office, if regulated entities accept OFIR's offer for one (1) final exit conference. The cost of travel and hourly rate must be included in the overall cost proposed by Contractor.

n. Remain available to answer any inquiries or clarify test-work and findings found during the examination until the next examination of the Company is completed. This is normally a three (3)-year period. Also, Contractor must assist OFIR during any administrative or court proceedings involving the examination reports, the examinations or any matter related to Contractor's work under this Contract.

o. Upon notice by OFIR, appear or be available to appear for testimony in any administrative or court proceedings involving the examination reports, the examinations or any matter related to Contractor's work under this Contract. OFIR will pay for this type of service outside the cost proposed under this Contract. However, OFIR will only pay the individual hourly rates agreed to within this Contract. These services will only be provided at the request of the Contract Compliance Inspector and a total agreed price will be determined before any services are rendered. No additional costs will be provided above the amount agreed to by the Contract Compliance Inspector.

p. Remain available to participate in Chapter 81 processes. During the course of an examination, it may become necessary for OFIR to take a Chapter 81 action, such as seizure of the assets or rehabilitation. If these services are above the normal course of the examination, a separate arrangement will be negotiated with Contractor. OFIR will make the final determination whether the services are above the normal course of the examination. Once a Chapter 81 action is taken, the Director of the Receivership Division, OFIR, may take responsibility for the examination.

q. Remain available to participate in review by the NAIC if necessary. OFIR will go through at least one (1) on-site review by the NAIC accreditation team during this Contract period. Contractor's anticipated participation would include answering questions about its work-papers and the oversight by OFIR during the examination. OFIR will pay for this type of service outside the cost proposed under this Contract. The rate charged by Contractor for these services must be the hourly rates agreed to in this Contract. These services will only be provided at the request of the Contract Compliance Inspector and a total agreed price will be determined before any services are rendered. No additional costs will be provided above the amount agreed to by the Contract Compliance Inspector.

r. Remain available to answer any questions or provide any additional documentation requested by the auditor general's office if OFIR is audited during this Contract period by the auditor general's office. OFIR is also audited by the State of Michigan Legislature's Office of the Auditor General. The Auditor General may review Contractor's work-papers. OFIR will pay for this type service outside the cost proposed under this Contract. The rate charged by Contractor for these services must be the hourly rates agreed to in this Contract. These services will only be provided at the request of the Contract Compliance Inspector and a total agreed price will be determined before any services are rendered.

*NOTE*: No additional costs will be provided above the amount agreed to by the Contract Compliance Inspector.

From time to time, zone examiners may participate on these examinations. OFIR may receive little or no advance notice of their participation. These examiners will be assigned specific line items by OFIR to complete and may also want to participate in the planning process. In addition, these examiners will also sign the report so that they will also have the right to review any work-papers produced from the exam; if they (individually or from their zone) report any specific concerns, OFIR may be involved in investigating them.

s. Within ten (10) working days from the beginning of the examination, unless otherwise agreed upon, Contractor will submit a work plan to the EIC and Chief Examiner for final approval. This final work plan or agreed upon procedures will be finalized after the examination planning has been completed jointly by Contractor and OFIR. This final implementation plan must be in agreement with Contractor's accepted and approved quotation and must include the following:

1) Contractor's project organizational structure.

2) Contractor's staffing table with names and title of personnel assigned to the project. This must be in agreement with staffing of accepted proposal. Necessary substitutions due to change of employment status and other unforeseen circumstances may only be made with prior approval of the State.

3) The project breakdown showing sub-projects, activities and tasks, and resources required and allocated to each.

4) The time-phased plan in the form of a graphic display, showing each event, task, and decision point in your work plan.

2. Financial Analysis
If awarded the financial analysis (project) assignment, Contractor must carry out this project under the direction and control of DELEG, and OFIR, and must:

a. Execute a cursory review on all assigned companies' financial statements in accordance with NAIC Guidelines and OFIR policies and procedures within 10 working days of the assignment. Prepare a listing of all companies assigned and make recommendations commensurate with findings. This listing and recommendation will be submitted and reviewed by an OFIR financial analysis and the company's licensing supervisor.

b. Execute an in-depth review and worksheet of the all assigned companies' financial statements in accordance with OFIR policies and procedures.

c. Complete each separate worksheet within three (3) days from the start date of the review, unless as otherwise agreed to by OFIR. This worksheet will be reviewed and approved by a financial analysis and company's licensing supervisor.

1) The financial analysis and company licensing supervisor may also have comments or concerns that will require additional review, follow up, and documentation by Contractor.

d. Complete any other tasks required to execute a financial analysis within NAIC Guidelines for the assigned project, as determined by OFIR.

e. Submit concise written biweekly progress reports to the Financial Analysis and Company Licensing Director indicating the work and reviews completed during the two (2) weeks, work in progress, problems real or anticipated, estimated date of completion for all.

f. Meet the NAIC accreditation standards and other standards of the NAIC for using outside firms to perform examinations. [NAIC requires the use of a CPA on an examination, where the insurer is licensed in more than one state, and other additional requirements will vary by examination and according to each state's circumstances. While there exists many different levels of service that a CPA may provide an insurance department, the use of a CPA in an examination is typically accomplished through an "agreed-upon procedures engagement."] Therefore, in order to comply with NAIC standards many of the examinations conducted under this Contract will be completed using agreed-upon procedures. OFIR will make the final determination whether agreed-upon procedures are necessary and acceptable.

g. Meet at least monthly with the Financial Analysis and Company Licensing Director, or whenever requested by the Financial Analysis and Company Licensing Director, with Contractor's Project Manager for the purpose of reviewing progress and providing necessary guidance to Contractor in solving problems which arise.

D. RFQ Evaluation

2. Each RFQ response must include all items identified in Section 1.022-B of this Contract and will be evaluated utilizing the following criteria:

- Description of Examination Services:
  - ☐ Examination Plan (per NAIC guidelines)
  - ☐ Service Description (per NAIC guidelines)

- Resource Allocation:
  - ☐ Appropriate supervisory-staff time allocated (per NAIC guidelines)
  - ☐ Computer specialist allocated to evaluate ISQ (per NAIC guidelines)
  - ☐ Examination's senior level auditor is scheduled on-site continuously throughout the entire examination
  - ☐ Senior auditor has previous experience in auditing insurance companies
  - _____ Total project staff hours for completion of examination

- Time:
  - ☐ Complete within 180 days or less from date assigned
  - Estimated Date of Completion: _____

- Price:
  - _____ Project Cost
  - _____ Expenses
  - _____ Total quote for examination

***1.030 Roles and Responsibilities***

**1.031 Contractor Staff, Roles, and Responsibilities**
The single point of contact, who will receive and respond to RFQs is:

Mark Laccetti
1650 Market Street, Suite 4500
Philadelphia, PA 19103
(215)557-2217
215-557-2217
Mark.laccetti@parentebeard.com

Any additional Contractor staff will be identified per individual project assignment with Contractor's quotation.

***1.040 Project Plan***

**1.41 Project Plan Management**
This information will be requested in individual RFQs.

**1.42 Reports**
This information will be requested in individual RFQs.

***1.050 Acceptance***

**1.051 Criteria**
Criteria to determine acceptance of deliverables will be provided in individual RFQs.

**1.052 Final Acceptance**
Once OFIR staff has determined that Contractor's master work-papers (supporting papers and final report) have been completed within NAIC guidelines and Contractor has provided all deliverables required of the individual RFQs, OFIR will authorize final payment.

## ***1.060 Proposal Pricing***

### 1.061 Proposal Pricing

See Attachment A for not-to-exceed hourly rate for each staff position.

Contractor's out-of-pocket expenses are not separately reimbursable by the State unless, on a case-by-case basis for unusual expenses, the State has agreed in advance and in writing to reimburse Contractor for the expense at the State's current travel reimbursement rates. See **www.michigan.gov/DTMB** for current rates.

### 1.062 Price Term

Prices quoted are firm for the entire length of this Contract.

### 1.063 Tax Excluded from Price

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

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

### 1.064 Holdback

The State has the right to hold back, as a retainage, an amount equal to twenty-five percent (25%) of all amounts invoiced by Contractor for Services/Deliverables. The amounts held back must be released to Contractor after the State has granted Final Acceptance.

## ***1.070 Additional Requirements***

### 1.071 Additional Terms and Conditions specific to this RFP – Deleted/Not Applicable

## Article 2, Terms and Conditions

### *2.000 Contract Structure and Term*

**2.001 Contract Term**
This Contract is for a period of three (3) years beginning August 10, 2010 through August 9, 2013. All outstanding Purchase Orders must also expire upon the termination (cancellation for any of the reasons listed in **Section 2.150**) of this Contract, unless otherwise extended under this Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of this Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

**2.002 Options to Renew**
This Contract may be renewed in writing by mutual agreement of the parties not less than 30 days before its expiration. This Contract may be renewed for up to two (2) additional one (1) year periods.

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

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

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

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

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

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

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

**2.008 Form, Function & Utility – Deleted/Not Applicable**

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

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

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

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

***2.020 Contract Administration***

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

Adam Koenigsknecht
Purchasing Operations
Department of Technology, Management and Budget
Mason Bldg, 2nd Floor
PO Box 30026
Lansing, MI 48909
koenigsknechta1@michigan.gov
517-335-6481

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

Rhonda S. Mackie, Analyst
Human Resources/Budget Division
Office of Financial and Insurance Regulation
Department of Energy, Labor and Economic Growth
611 W. Ottawa Street, 3rd Floor
P.O. Box 30220
Lansing, MI 48909
Phone: 517.335.1732
Fax: 517.373.8674
Email: mackier@michigan.gov

**2.023 Project Manager**
The following individual will oversee the project:

Robert C. Lamberjack, CFE, Chief Examiner
Enterprise Monitoring & Insurance Division
Insurance Examination Section
Office of Financial and Insurance Regulation
Department of Energy, Labor and Economic Growth
611 W. Ottawa Street, 3rd Floor
P.O. Box 30220
Lansing, MI 48909
Telephone Number: 517.335.1746
Fax Number: 517.373.6739
E-mail Address: lamberjackr@michigan.gov

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

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

Change Requests:

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

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

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

**2.025 Notices**
Any notice given to a party under this Contract must be deemed effective, if addressed to the State contact as noted in Section 2.021 and Contractor's contact as noted on the cover page of this Contract, upon: (i) delivery, if hand delivered; (ii) receipt of a confirmed transmission by facsimile if a copy of the notice is sent by another means specified in this Section; (iii) the third Business Day after being sent by U.S. mail, postage pre-paid, return receipt requested; or (iv) the next Business Day after being sent by a nationally recognized overnight express courier with a reliable tracking system.

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

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

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

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

**2.029 Assignments**
(a) Neither party may assign this Contract, or assign or delegate any of its duties or obligations under this Contract, to any other party (whether by operation of law or otherwise), without the prior written consent of the other party; provided, however, that the State may assign this Contract to any other State agency, department, division or department without the prior consent of Contractor and Contractor may assign this Contract to an affiliate so long as the affiliate is adequately capitalized and can provide adequate assurances that the affiliate can perform the requirements of this Contract. The State may withhold consent from proposed assignments, subcontracts, or novations when the transfer of responsibility would operate to decrease the State's likelihood of receiving performance on this Contract or the State's ability to recover damages.

(b) Contractor may not, without the prior written approval of the State, assign its right to receive payments due under this Contract. If the State permits an assignment, Contractor is not relieved of its responsibility to perform any of its contractual duties, and the requirement under this Contract that all payments must be made to one entity continues.

(c) If Contractor intends to assign this Contract or any of Contractor's rights or duties under this Contract, Contractor must notify the State in writing at least 90 days before the assignment. 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 must not be made without prior written State approval, and then only in accordance with the explicit written instructions from the State. No results of the activities associated with 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 Contractor's website, even if Contractor's documentation specifically referenced that content and attempts to incorporate it into any other communication, unless the State has actual knowledge of the content and has expressly agreed to be bound by it in a writing that has been manually signed by an authorized representative of the State.

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

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

**2.037 Disaster Recovery**
Contractor and the State recognize that the State provides essential services in times of natural or man-made disasters. Therefore, except as so mandated by Federal disaster response requirements, Contractor personnel dedicated to providing Services/Deliverables under this Contract must provide the State with priority service for repair and work around in the event of a natural or man-made disaster.

## ***2.040 Financial Provisions***

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

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

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

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

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

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

(d) All invoices should reflect actual work done. Specific details of invoices and payments will be agreed upon between the CCI and Contractor.

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

The State may make progress payments to Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the CCI, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.

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

**2.046 Antitrust Assignment**
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 Contractor, toward fulfillment of this Contract.

**2.047 Final Payment**
The making of final payment by the State to Contractor does not constitute a waiver by either party of any rights or other claims as to the other party's continuing obligations under this Contract, nor will it constitute a waiver of any claims by one party against the other arising from unsettled claims or failure by a party to comply with this Contract, including claims for Services and Deliverables not reasonably known until after acceptance to be defective or substandard. Contractor's acceptance of final payment by the State under this Contract must constitute a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still unsettled.

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

***2.050 Taxes***

**2.051 Employment Taxes**
Contractor is expected to collect and pay all applicable federal, state, and local employment taxes.

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

***2.060 Contract Management***

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

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

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

(c) The State reserves the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor must notify the State of the proposed assignment, must introduce the individual to the appropriate State representatives, and must provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State must provide a written explanation including reasonable detail outlining the reasons for the rejection.

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

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

**2.063 Re-assignment of Personnel at the State's Request**

The State reserves the right to require the removal from the project of Contractor personnel found, in the judgment of the State, to be unacceptable. The State's request must be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request must be based on legitimate, good-faith reasons. Replacement personnel for the removed person must be fully qualified for the position. If the State exercises this right, and Contractor cannot immediately replace the removed personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any incident with removed personnel results in delay not reasonably anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Service will not be counted for a time as agreed to by the parties.

**2.064 Contractor Personnel Location**

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

**2.065 Contractor Identification**

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

**2.066 Cooperation with Third Parties**

Contractor must cause its personnel and the personnel of any Subcontractors to cooperate with the State and its agents and other Contractors including the State's Quality Assurance personnel. As reasonably requested by the State in writing, Contractor must provide to the State's agents and other Contractors reasonable access to Contractor's Project personnel, systems and facilities to the extent the access relates to activities specifically associated with this Contract and will not interfere or jeopardize the safety or operation of the systems or facilities. The State acknowledges that Contractor's time schedule for this Contract is very specific and must not unnecessarily or unreasonably interfere with, delay, or otherwise impede Contractor's performance under this Contract with the requests for access.

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

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

***2.070 Subcontracting by Contractor***

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

**2.072 State Consent to Delegation**
Contractor must not delegate any duties under this Contract to a Subcontractor unless the Department of Technology, Management and Budget, Purchasing Operations has given written consent to such delegation. The State reserves the right of prior written approval of all Subcontractors and to require Contractor to replace any Subcontractors found, in the reasonable judgment of the State, to be unacceptable. The State's request must be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request must be based on legitimate, good-faith reasons. Replacement Subcontractor(s) for the removed Subcontractor must be fully qualified for the position. If the State exercises this right, and Contractor cannot immediately replace the removed Subcontractor, the State will agree to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with a removed Subcontractor results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLA for the affected Work will not be counted for a time agreed upon by the parties.

**2.073 Subcontractor Bound to Contract**
In any subcontracts entered into by Contractor for the performance of the Services, Contractor must require the Subcontractor, to the extent of the Services to be performed by the Subcontractor, to be bound to Contractor by the terms of this Contract and to assume toward Contractor all of the obligations and responsibilities that Contractor, by this Contract, assumes toward the State. The State reserves the right to receive copies of and review all subcontracts, although Contractor may delete or mask any proprietary information, including pricing, contained in such Contracts before providing them to the State. The management of any Subcontractor is the responsibility of Contractor, and Contractor must remain responsible for the performance of its Subcontractors to the same extent as if Contractor had not subcontracted such performance. Contractor must make all payments to Subcontractors or suppliers of Contractor. Except as otherwise agreed in writing by the State and Contractor, the State will not be obligated to direct payments for the Services other than to Contractor. The State's written approval of any Subcontractor engaged by Contractor to perform any obligation under this Contract will not relieve Contractor of any obligations or performance required under this Contract.

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

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

### *2.080 State Responsibilities*

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

**2.082 Facilities**
The State must designate space as long as it is available and as provided in the Statement of Work, to house Contractor's personnel whom the parties agree will perform the Services/Deliverables at State facilities (collectively, the "State Facilities"). 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 Contractor in the course of providing the Services. Contractor must not, without the prior written consent of the State, use any State Facilities or access any State information systems provided for Contractor's use, or to which Contractor otherwise gains access in the course of performing the Services, for any purpose other than providing the Services to the State.

### *2.090 Security*

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

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

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

**2.093 PCI Data Security Requirements – Deleted/Not Applicable**

### *2.100 Confidentiality*

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

**2.102 Protection and Destruction of Confidential Information**
The State and Contractor must each use at least the same degree of care to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication, or dissemination of its own confidential information of like character, but in no event less than reasonable care. Neither Contractor nor the State will (i) make any use of the Confidential Information of the other except as contemplated by this Contract, (ii) acquire any right in or assert any lien against the Confidential Information of the other, or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information to the other party. Each party must limit disclosure of the other party's Confidential Information to employees and Subcontractors who must have access to fulfill the purposes of this Contract. Disclosure to, and use by, a Subcontractor is permissible where (A) use of a Subcontractor is authorized under this Contract, (B) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Subcontractor's scope of responsibility, and (C) Contractor obligates the Subcontractor in a written Contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor and of any Subcontractor having access or continued access to the State's Confidential Information may be required to execute an acknowledgment that the employee has been advised of Contractor's and the Subcontractor's obligations under this Section and of the employee's obligation to Contractor or Subcontractor, as the case may be, to protect the Confidential Information from unauthorized use or disclosure.

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

**2.103 Exclusions**
Notwithstanding the foregoing, the provisions of **Section 2.100** will not apply to any particular information which the State or Contractor can demonstrate (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving party; (iii) was in the possession of the receiving party at the time of disclosure to it without an obligation of confidentiality; (iv) was received after disclosure to it from a third party who had a lawful right to disclose the information to it without any obligation to restrict its further disclosure; or (v) was independently developed by the receiving party without reference to Confidential Information of the furnishing party. Further, the provisions of **Section 2.100** will not apply to any particular Confidential Information to the extent the receiving party is required by law to disclose the Confidential Information, provided that the receiving party (i) promptly provides the furnishing party with notice of the legal request, and (ii) assists the furnishing party in resisting or limiting the scope of the disclosure as reasonably requested by the furnishing party.

**2.104 No Implied Rights**
Nothing contained in this Section must be construed as obligating a party to disclose any particular Confidential Information to the other party, or as granting to or conferring on a party, expressly or impliedly, any right or license to the Confidential Information of the other party.

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

***2.110 Records and Inspections***

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

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

become publicly available. This provision also applies to the books, records, accounts, documents and papers, in print or electronic form, of any parent, affiliated or subsidiary organization of Contractor, or any Subcontractor of Contractor performing services in connection with this Contract.

**2.113 Retention of Records**
Contractor must maintain at least until the end of the Audit Period, all pertinent financial and accounting records (including time sheets and payroll records, information pertaining to this Contract, and to the Services, equipment, and commodities provided under this Contract) pertaining to this Contract according to generally accepted accounting principles and other procedures specified in this Section. Financial and accounting records must be made available, upon request, to the State at any time during the Audit Period. If an audit, litigation, or other action involving Contractor's records is initiated before the end of the Audit Period, the records must be retained until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.

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

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

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

***2.120 Warranties***

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

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

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

(c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by Contractor under this Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by Contractor to the State under this Contract, nor their use by the State, will infringe the patent, copyright, trade secret, or other proprietary rights of any third party.

(d) If, under this Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to the items in this Contract, Contractor must assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.

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

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

(g) Neither Contractor nor any affiliates, nor any employee of either, has, must have, or must acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under this Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor must notify the State about the nature of the conflict or appearance of impropriety within two days of learning about it.

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

**2.122 Warranty of Merchantability – Deleted/Not Applicable**

**2.123 Warranty of Fitness for a Particular Purpose – Deleted/Not Applicable**

**2.124 Warranty of Title – Deleted/Not Applicable**

**2.125 Equipment Warranty – Deleted/Not Applicable**

**2.126 Equipment to be New – Deleted/Not Applicable**

**2.127 Prohibited Products – Deleted/Not Applicable**

**2.128 Consequences For Breach**
In addition to any remedies available in law, if 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**
Contractor must provide proof of the minimum levels of insurance coverage as indicated below. The insurance must protect the State from claims which may arise out of or result from Contractor's performance of Services under the terms of this Contract, whether the Services are performed by Contractor, or by any Subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

Contractor waives all rights against the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents for recovery of damages to the extent these damages are covered by the insurance policies Contractor is required to maintain under this Contract.

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

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

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

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

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

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

$2,000,000 General Aggregate Limit other than Products/Completed Operations
$2,000,000 Products/Completed Operations Aggregate Limit
$1,000,000 Personal & Advertising Injury Limit
$1,000,000 Each Occurrence Limit

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

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

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

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

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

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

☑ **4**. Professional Liability (Errors and Omissions) Insurance with the following minimum coverage: $1,000,000.00 each occurrence and $1,000,000.00 annual aggregate.

**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 Contractor in connection with the performance of work by those Subcontractors. Alternatively, Contractor may include any Subcontractors under Contractor's insurance on the coverage required in this Section. Subcontractor must fully comply with the insurance coverage required in this Section. Failure of Subcontractor to comply with insurance requirements does not limit Contractor's liability or responsibility.

**2.133 Certificates of Insurance and Other Requirements**

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

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

## *2.140 Indemnification*

### 2.141 General Indemnification
To the extent permitted by law, Contractor must indemnify, defend and hold harmless the State from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties), accruing or resulting to any person, firm or corporation that may be injured or damaged by Contractor in the performance of this Contract and that are attributable to the negligence or tortious acts of Contractor or any of its Subcontractors, or by anyone else for whose acts any of them may be liable.

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

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

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

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

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

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

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

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

(b) If Contractor delivers a Notice of Election relating to any claim: (i) the State is entitled to participate in the defense of the claim and to employ counsel at its own expense to assist in the handling of the claim and to monitor and advise the State about the status and progress of the defense; (ii) Contractor must, at the request of the State, demonstrate to the reasonable satisfaction of the State, Contractor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) Contractor must periodically advise the State about the status and progress of the defense and must obtain the prior written approval of the State before entering into any settlement of the claim or ceasing to defend against the claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State has the right, at its own expense, to control the defense of that portion of the claim involving the principles of Michigan governmental or public law. But the State may retain control of the defense and settlement of a claim by notifying Contractor in writing within 10 days after the State's receipt of Contractor's information requested by the State under clause (ii) of this paragraph if the State determines that Contractor has failed to demonstrate to the reasonable satisfaction of the State Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State under this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

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

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

### 2.151 Notice and Right to Cure

If Contractor breaches this Contract, and the State, in its sole discretion, determines that the breach is curable, then the State must provide 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 Contractor in writing, if Contractor (i) breaches any of its material duties or obligations under this Contract (including a Chronic Failure to meet any particular SLA), or (ii) fails to cure a breach within the time period specified in the written notice of breach provided by the State.

(b) If this Contract is terminated for cause, Contractor must pay all costs incurred by the State in terminating this Contract, including but not limited to, State administrative costs, reasonable attorneys' fees and court costs, and any reasonable additional costs the State may incur to procure the Services/Deliverables required by this Contract from other sources. Re-procurement costs are not consequential, indirect or incidental damages, and cannot be excluded by any other terms otherwise included in this Contract, provided the costs are not in excess of 50% more than the prices for the Service/Deliverables provided under this Contract.

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

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

**2.153 Termination for Convenience**

The State may terminate this Contract for its convenience, in whole or part, if the State determines that a termination is in the State's best interest. Reasons for the termination must be left to the sole discretion of the State and may include, but not necessarily be limited to (a) the State no longer needs the Services or products specified in this Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Services no longer practical or feasible, (c) unacceptable prices for Additional Services or New Work requested by the State, or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any RFP issued by the State. The State may terminate this Contract for its convenience, in whole or in part, by giving Contractor written notice at least 30 days before the date of termination. If the State chooses to terminate this Contract in part, the charges payable under this Contract must be equitably adjusted to reflect those Services/Deliverables that are terminated. Services and related provisions of this Contract that are terminated for cause must cease on the effective date of the termination.

**2.154 Termination for Non-Appropriation**

(a) Contractor acknowledges that, if this Contract extends for several fiscal years, continuation of this Contract is subject to appropriation or availability of funds for this Contract. If funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available, the State must terminate this Contract and all affected Statements of Work, in whole or in part, at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Contractor. The State must give Contractor at least 30 days advance written notice of termination for non-appropriation or unavailability (or the time as is available if the State receives notice of the final decision less than 30 days before the funding cutoff).

(b) If funding for this Contract is reduced by law, or funds to pay Contractor for the agreed-to level of the Services or production of Deliverables to be provided by Contractor are not appropriated or otherwise unavailable, the State may, upon 30 days written notice to Contractor, reduce the level of the Services or the change the production of Deliverables in the manner and for the periods of time as the State may elect. The charges payable under this Contract will be equitably adjusted to reflect any equipment, services or commodities not provided by reason of the reduction.

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

**2.155 Termination for Criminal Conviction**

The State may terminate this Contract immediately and without further liability or penalty in the event Contractor, an officer of Contractor, or an owner of a 25% or greater share of Contractor is convicted of a criminal offense related to a State, public or private Contract or subcontract.

**2.156 Termination for Approvals Rescinded**

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

**2.157 Rights and Obligations upon Termination**

(a) If the State terminates this Contract for any reason, Contractor must (a) stop all work as specified in the notice of termination, (b) take any action that may be necessary, or that the State may direct, for preservation and protection of Deliverables or other property derived or resulting from this Contract that may be in Contractor's possession, (c) return all materials and property provided directly or indirectly to Contractor by any entity, agent or employee of the State, (d) transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables intended to be transferred to the State at the termination of this Contract and which are resulting from this Contract (which must be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of the items included compensation to Contractor for the provision of warranty services in respect of the materials), and (e) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract.

(b) If the State terminates this Contract before its expiration for its own convenience, the State must pay Contractor for all charges due for Services provided before the date of termination and, if applicable, as a separate item of payment under this Contract, for Work In Process, on a percentage of completion basis at the level of completion determined by the State. All completed or partially completed Deliverables prepared by Contractor under this Contract, at the option of the State, becomes the State's property, and Contractor is entitled to receive equitable fair compensation for the Deliverables. Regardless of the basis for the termination, the State is not obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.

(c) Upon a good faith termination, the State may assume, at its option, any subcontracts and agreements for Services and Deliverables provided under this Contract, and may further pursue completion of the Services/Deliverables under this Contract by replacement Contract or otherwise as the State may in its sole judgment deem expedient.

**2.158 Reservation of Rights**

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

***2.160 Termination by Contractor***

**2.161 Termination by Contractor**

If the State breaches this Contract, and Contractor in its sole discretion determines that the breach is curable, then 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.

Contractor may terminate this Contract if the State (i) materially breaches its obligation to pay 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 Contractor to perform the Services, or (iii) does not cure the breach within the time period specified in a written notice of breach. But Contractor must discharge its obligations under **Section 2.190** before it terminates this Contract.

***2.170 Transition Responsibilities***

**2.171 Contractor Transition Responsibilities**

If the State terminates this Contract, for convenience or cause, or if this Contract is otherwise dissolved, voided, rescinded, nullified, expires or rendered unenforceable, Contractor agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. If this Contract expires or terminates, Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed 270 calendar days. These efforts must include, but are not limited to, those listed in **Sections 2.171, 2.172, 2.173, 2.174, and 2.175.**

**2.172 Contractor Personnel Transition**
Contractor must work with the State, or a specified third party, to develop a transition plan setting forth the specific tasks and schedule to be accomplished by the parties to effect an orderly transition. Contractor must allow as many personnel as practicable to remain on the job to help the State, or a specified third party, maintain the continuity and consistency of the services required by this Contract. In addition, during or following the transition period, in the event the State requires the Services of Contractor's Subcontractors or vendors, as necessary to meet its needs, Contractor agrees to reasonably, and with good-faith, work with the State to use the Services of Contractor's Subcontractors or vendors. Contractor must notify all of Contractor's subcontractors of procedures to be followed during transition.

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

**2.174 Contractor Software Transition – Deleted/Not Applicable**

**2.175 Transition Payments**
If the transition results from a termination for any reason, reimbursement must be governed by the termination provisions of this Contract. If the transition results from expiration, Contractor will be reimbursed for all reasonable transition costs (i.e. costs incurred within the agreed period after this Contract's expiration that result from transition operations) at the rates agreed upon by the State. Contractor must prepare an accurate accounting from which the State and Contractor may reconcile all outstanding accounts.

**2.176 State Transition Responsibilities**
In the event that this Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the State agrees to perform the following obligations, and any others upon which the State and Contractor agree:
(a) Reconciling all accounts between the State and Contractor;
(b) Completing any pending post-project reviews.

***2.180 Stop Work***

**2.181 Stop Work Orders**
The State may, at any time, by written stop work order to Contractor, require that Contractor stop all, or any part, of the work called for by this Contract for a period of up to 90 calendar days after the stop work order is delivered to Contractor, and for any further period to which the parties may agree. The stop work order must be identified as a stop work order and must indicate that it is issued under this **Section 2.180**. Upon receipt of the stop work order, Contractor must immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of the stop work order, the State must either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order as provided in **Section 2.150**.

**2.182 Cancellation or Expiration of Stop Work Order**
Contractor must resume work if the State cancels a Stop Work Order or if it expires. The parties will agree upon an equitable adjustment in the delivery schedule, this Contract's price, or both, and this Contract must be modified, in writing, accordingly, if: (a) the stop work order results in an increase in the time required for, or in Contractor's costs properly allocable to, the performance of any part of this Contract; and (b) Contractor asserts its right to an equitable adjustment within 30 calendar days after the end of the period of work stoppage; provided that, if the State decides the facts justify the action, the State may receive and act upon a Contractor proposal submitted at any time before final payment under this Contract. Any adjustment must conform to the requirements of **Section 2.024**.

**2.183 Allowance of Contractor Costs**
If the stop work order is not canceled and the work covered by the stop work order is terminated for reasons other than material breach, the termination must be deemed to be a termination for convenience under **Section 2.150**, and the State will pay reasonable costs resulting from the stop work order in arriving at the termination settlement.

For the avoidance of doubt, the State is not liable to Contractor for loss of profits because of a stop work order issued under this **Section 2.180.**

***2.190 Dispute Resolution***

**2.191 In General**
Any claim, counterclaim, or dispute between the State and Contractor arising out of or relating to this Contract or any Statement of Work must be resolved as follows. For all of Contractor's claims seeking an increase in the amounts payable to Contractor under this Contract, or the time for Contractor's performance, Contractor must submit a letter, together with all data supporting the claims, executed by Contractor's Contract Administrator or the this 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 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, DTMB, or designee, for the purpose of attempting to resolve the dispute without the need for formal legal proceedings, as follows:

(i) The representatives of Contractor and the State must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives must discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.

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

(iii) The specific format for the discussions will be left to the discretion of the designated State and Contractor's representatives, but may include the preparation of agreed upon statements of fact or written statements of position.

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

(b) This Section must not be construed to prevent either party from instituting, and a party is authorized to institute, formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or under **Section 2.193**.

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

**2.193 Injunctive Relief**
The only circumstance in which disputes between the State and Contractor will not be subject to the provisions of **Section 2.192** is where a party makes a good faith determination that a breach of the terms of this Contract by the other party is the that the damages to the party resulting from the breach will be so immediate, so large or severe and so incapable of adequate redress after the fact that a temporary restraining order or other immediate injunctive relief is the only adequate remedy.

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

## *2.200 Federal and State Contract Requirements*

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

**2.202 Unfair Labor Practices**
Under 1980 PA 278, MCL 423.321, et seq., the State must not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under Section 2 of the Act. This information is compiled by the United States National Labor Relations Board. A Contractor of the State, in relation to 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, 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, Contractor must comply with Civil Service regulations and any applicable agency rules provided to Contractor. For Civil Service Rules, see http://www.mi.gov/mdcs/0,1607,7-147-6877---,00.html.

**2.204 Prevailing Wage – Deleted/Not Applicable**

## *2.210 Governing Law*

**2.211 Governing Law**
This Contract must in all respects be governed by, and construed according to, the substantive laws of the State of Michigan without regard to any Michigan choice of law rules that would apply the substantive law of any other jurisdiction to the extent not inconsistent with, or pre-empted by federal law.

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

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

## *2.220 Limitation of Liability*

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

***2.230 Disclosure Responsibilities***

**2.231 Disclosure of Litigation**

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

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

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

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

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

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

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

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

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

**2.232 Call Center Disclosure – Deleted/Not Applicable**

**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) Contractor files for protection under the bankruptcy laws;

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

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

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

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

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

## *2.240 Performance*

### 2.241 Time of Performance

(a) Contractor must use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables according to the time schedules contained in the Statements of Work and other Exhibits governing the work, and with professional quality.

(b) Without limiting the generality of **Section 2.241(a),** Contractor must notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and must inform the State of the projected actual delivery date.

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

### 2.242 Service Level Agreements (SLAs) – Deleted/Not Applicable

### 2.243 Liquidated Damages – Deleted/Not Applicable

### 2.244 Excusable Failure

Neither party will be liable for any default, damage, or delay in the performance of its obligations under this Contract to the extent the default, damage or delay is caused by government regulations or requirements (executive, legislative, judicial, military, or otherwise), power failure, lightning, earthquake, war, water or other forces of nature or acts of God, delays or failures of transportation, equipment shortages, suppliers' failures, or acts or omissions of common carriers, fire; riots, civil disorders; strikes or other labor disputes, embargoes; injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of a party; provided the non-performing party and its Subcontractors are without fault in causing the default or delay, and the default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans.

If a party does not perform its contractual obligations for any of the reasons listed above, the non-performing party will be excused from any further performance of its affected obligation(s) for as long as the circumstances prevail. 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 Contractor's performance of the Services/provision of Deliverables for more than 10 Business Days, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State in its reasonable discretion, then at the State's option: (a) the State may procure the affected Services/Deliverables from an alternate source, and the State is not be liable for payment for the unperformed Services/ Deliverables not provided under this Contract for so long as the delay in performance continues; (b) the State may terminate any portion of this Contract so affected and the charges payable will be equitably adjusted to reflect those Services/Deliverables terminated; or (c) the State may terminate the affected Statement of Work without liability to Contractor as of a date specified by the State in a written notice of termination to Contractor, except to the extent that the State must pay for Services/Deliverables provided through the date of termination.

Contractor will not have the right to any additional payments from the State as a result of any Excusable Failure occurrence or to payments for Services not rendered/Deliverables not provided as a result of the Excusable Failure condition. Defaults or delays in performance by Contractor which are caused by acts or omissions of its Subcontractors will not relieve Contractor of its obligations under this Contract except to the extent that a Subcontractor is itself subject to an Excusable Failure condition described above and Contractor cannot reasonably circumvent the effect of the Subcontractor's default or delay in performance through the use of alternate sources, workaround plans or other means.

***2.250 Approval of Deliverables***

**2.251 Delivery Responsibilities – Deleted/Not Applicable**

**2.252 Delivery of Deliverables – Deleted/Not Applicable**

**2.253 Testing – Deleted/Not Applicable**

**2.254 Approval of Deliverables, In General – Deleted/Not Applicable**

**2.255 Process For Approval of Written Deliverables**
The State Review Period for Written Deliverables will be the number of days set forth in the applicable Statement of Work following delivery of the final version of the Deliverable (and if the Statement of Work does not state the State Review Period, it is by default five Business Days for Written Deliverables of 100 pages or less and 10 Business Days for Written Deliverables of more than 100 pages). The duration of the State Review Periods will be doubled if the State has not had an opportunity to review an interim draft of the Written Deliverable before its submission to the State. The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Deliverable is approved in the form delivered by Contractor or describing any deficiencies that must be corrected before approval of the Deliverable (or at the State's election, after approval of the Deliverable). If the State notifies Contractor about deficiencies, Contractor must correct the described deficiencies and within 30 Business Days resubmit the Deliverable in a form that shows all revisions made to the original version delivered to the State. Contractor's correction efforts must be made at no additional charge. Upon receipt of a corrected Deliverable from Contractor, the State must have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Deliverable to confirm that the identified deficiencies have been corrected.

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

**2.257 Process for Approval of Physical Deliverables – Deleted/Not Applicable**

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

***2.260 Ownership***

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

**2.262 Vesting of Rights**
With the sole exception of any preexisting licensed works identified in the SOW, Contractor assigns, and upon creation of each Deliverable automatically assigns, to the State, ownership of all United States and international copyrights, trademarks, patents, or other proprietary rights in each and every Deliverable, whether or not

registered by Contractor, insofar as any the Deliverable, by operation of law, may not be considered work made for hire by Contractor for the State. From time to time upon the State's request, Contractor must confirm the assignment by execution and delivery of the assignments, confirmations of assignment, or other written instruments as the State may request. The State may obtain and hold in its own name all copyright, trademark, and patent registrations and other evidence of rights that may be available for Deliverables.

**2.263 Rights in Data**

(a) The State is the owner of all data made available by the State to Contractor or its agents, Subcontractors or representatives under this Contract. Contractor must not use the State's data for any purpose other than providing the Services, nor will any part of the State's data be disclosed, sold, assigned, leased or otherwise disposed of to the general public or to specific third parties or commercially exploited by or on behalf of Contractor. No employees of Contractor, other than those on a strictly need-to-know basis, have access to the State's data. Contractor must not possess or assert any lien or other right against the State's data. Without limiting the generality of this Section, 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. Contractor must comply at all times with all laws and regulations applicable to the personally identifiable information.

(b) The State is the owner of all State-specific data under this Contract. The State may use the data provided by Contractor for any purpose. The State must not possess or assert any lien or other right against 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 Contractor will continue to own their respective proprietary technologies developed before entering into this Contract. Any hardware bought through Contractor by the State, and paid for by the State, will be owned by the State. Any software licensed through Contractor and sold to the State, will be licensed directly to the State.

***2.270 State Standards***

**2.271 Existing Technology Standards**

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

**2.272 Acceptable Use Policy**

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

**2.273 Systems Changes**

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

***2.280 Extended Purchasing***

**2.281 MIDEAL – Deleted/Not Applicable**

**2.282 State Employee Purchases - Deleted/Not Applicable**

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

**2.291 Environmental Provision – Deleted/Not Applicable**

### ***2.300 Other Provisions***

**2.311 Forced Labor, Convict Labor, Forced or Indentured Child Labor, or Indentured Servitude Made Materials**

Equipment, materials, or supplies, that will be furnished to the State under this Contract must not be produced in whole or in part by forced labor, convict labor, forced or indentured child labor, or indentured servitude.

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

## ATTACHMENT A – PRICING

| Staff Position | Hourly Rate |
|---|---|
| Partner | $ 190.00 |
| Senior Manager | $ 160.00 |
| Manager | $ 150.00 |
| Senior | $ 125.00 |
| Staff | $ 80.00 |
| IT Director | $ 170.00 |
| IT Manager | $ 155.00 |
| IT Senior | $ 130.00 |
| Actuary | $ 190.00 |