



STATE OF MICHIGAN ENTERPRISE PROCUREMENT

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

CONTRACT CHANGE NOTICE

Change Notice Number 7
to
Contract Number 071B1300017

CONTRACTOR	York Risk Services Group
	645 W. Grand River
	Howell, MI 48843
	Scott Gaffner
	(517) 540-3177
	scott.gaffner@yorkrsg.com
	*****6066

STATE	Program Manager	Bethany Beauchine	DTMB
		517-335-2579	
		beauchineb@michigan.gov	
	Contract Administrator	Brandon Samuel	DTMB
		(517) 284-7025	
		SamuelB@michigan.gov	

CONTRACT SUMMARY				
DESCRIPTION: Worker's Compensation Services				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
October 1, 2010	September 30, 2013	2 - 1 Year	September 30, 2016	
PAYMENT TERMS		DELIVERY TIMEFRAME		
N/A		N/A		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
MINIMUM DELIVERY REQUIREMENTS				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input checked="" type="checkbox"/>	180 Days	March 29, 2017
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$12,111,530.00		\$ 0.00	\$12,111,530.00	

DESCRIPTION: Effective July 29, 2016, this Contract is hereby extended 180 days per Section 2.170. Please note the Contract Administrator has been change to Dan Stevens per Section 2.024 Change Requests. The revised Contract expiration date is March 29, 2017.

All other terms, conditions, specifications and pricing remain the same. Per contract and agency agreement, and DTMB Procurement approval.

STATE OF MICHIGAN
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT & BUDGET
 PROCUREMENT

525 W. ALLEGAN STREET
 LANSING, MI 48933

P.O. BOX 30026
 LANSING, MI 48909

CHANGE NOTICE NO. 6
 to
 CONTRACT NO. 071B1300017
 between
 THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
York Risk Services Group 808 N. Highlander Way Howell Michigan, 48843	Scott Gaffner	scott.gaffner@cmi-yorkrsg.com
	PHONE	CONTRACTOR'S TAX ID NO. (LAST FOUR DIGITS ONLY)
	(517) 338-3349	*****6066

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER / CCI	DTMB	Bethany Beauchine	(517) 335-2579	beauchineb@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Brandon Samuel	(517) 284-7025	samuelb@michigan.gov

CONTRACT SUMMARY			
DESCRIPTION: Workers' Compensation Third Party Administration Services			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
October 1, 2010	September 30, 2013	2, one year	September 30, 2016
PAYMENT TERMS		DELIVERY TIMEFRAME	
N/A		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
N/A			

DESCRIPTION OF CHANGE NOTICE				
EXERCISE OPTION?	LENGTH OF OPTION	EXERCISE EXTENSION?	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input type="checkbox"/>		
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$12,111,530.00	\$ 0.00	\$12,111,530.00		

DESCRIPTION:
 Effective January 25, 2016, the vendor name is hereby changed from Citizens Management Inc. to York Risk Services Group. Please note that the Contract Administrator has been changed to Brandon Samuel and the Program Manager / CCI has been changed to Bethany Beauchine. All other terms, conditions, specifications and pricing remain the same. Per DTMB contractor and agency agreement, and DTMB Procurement approval.

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

CHANGE NOTICE NO. 5
 to
CONTRACT NO. 071B1300017
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
CMI, A York Risk Services Company, Inc. 645 W. Grand River, Suite 100 Howell, MI 48843	Scott Gaffner	Scott.gaffner@cmi-yorkrsg.com
	PHONE	VENDOR TAX ID # (LAST FOUR DIGITS ONLY)
	(517) 338-3349	-6066

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER / CCI	DTMB	Ken Swisher	(517) 373-0438	swisherk@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Lance Kingsbury	(517) 284-7017	kingsburyl@michigan.gov

CONTRACT SUMMARY			
DESCRIPTION: Workers' Compensation Third Party Administration Services			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
October 1, 2010	September 30, 2013	2, one year	September 30, 2015
PAYMENT TERMS	F.O.B.	SHIPPED TO	
N/A	N/A	N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
N/A			

DESCRIPTION OF CHANGE NOTICE				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF EXTENSION/OPTION	EXPIRATION DATE AFTER CHANGE
<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1 year	September 30, 2016
CURRENT VALUE	VALUE/COST OF CHANGE NOTICE	ESTIMATED REVISED AGGREGATE CONTRACT VALUE		
\$10,411,530.00	\$1,700,000.00	\$12,111,530.00		

DESCRIPTION:
 Effective October 1, 2015, this contract is hereby extended to September 31, 2016 and increased by \$1,700,000.00. All other terms, conditions, pricing and specifications remain the same. Per contractor and agency agreement and DTMB Procurement approval.

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

September 20, 2013

CHANGE NOTICE NO. 4
 to
CONTRACT NO. 071B1300017
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
CMI, A York Risk Services Company, Inc. 645 W. Grand River, Suite 100 Howell, MI 48843	Scott Gaffner	scott.gaffner@cmi-yorkrsg.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(517) 338-3349	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	DTMB	Ken Swisher	(517) 373-0438	swisherk@michigan.gov
BUYER	DTMB	Lance Kingsbury	(517) 241-3768	kingsburyl@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: Workers' Compensation Thirdy Party Administration Services			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
October 1, 2010	September 30, 2013	2, 1 Yr. Options	September 30, 2013
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS:			
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
<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	2 Year	September 30, 2015
VALUE/COST OF CHANGE NOTICE:		ESTIMATED AGGREGATE CONTRACT VALUE REMAINS:		
\$4,600,000.00		\$10,411,530.00		

Effective immediately, this Contract is hereby utilizing the two (2) option years to September 30, 2015 and is INCREASED by \$4,600,000.00. Please see Individual Fees Changes as indicated:

	FY2014	FY2015
Medical Only Claims Handling	\$155.00 per claim	\$160.00 per claim
Lost Time Claims Handling	\$825.00 per claim	\$830.00 per claim
Maintenance	\$ 25.00 per claim/ month	\$ 25.00 per claim/ month
Administrative Fee	\$385,000.00	\$390,000.00
Fee Schedule Application	\$ 1.65 per line	\$ 2.00 per line

All other terms, conditions, specifications, and pricing

Per vendor agreement, DTMB Procurement approval, and the approval of the State Administrative Board dated September 13, 2013.

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

July 26, 2013

CHANGE NOTICE NO. 3
 to
CONTRACT NO. 071B1300017
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
CMI, A York Risk Services Company, Inc. 645 W. Grand River, Suite 100 Howell, MI 48843	Scott Gaffner	scott.gaffner@cmi-yorkrsg.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(517) 338-3349	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	DTMB	Ken Swisher	(517) 373-0438	swisherk@michigan.gov
BUYER	DTMB	Lance Kingsbury	(517) 241-3768	kingsburyl@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: Workers' Compensation Thirdy Party Administration Services			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
October 1, 2010	September 30, 2013	2, 1 Yr. Options	September 30, 2013
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS:			
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
<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	<input type="checkbox"/>	<input type="checkbox"/>		
VALUE/COST OF CHANGE NOTICE:		ESTIMATED AGGREGATE CONTRACT VALUE REMAINS:		
\$500,000.00		\$5,811,530.00		

Effective July 23, 2013, this contract is hereby INCREASED by \$500,000.00. Additionally, the following changes have been made:

Section 1.022 Work and Deliverables, #1. Claims Intake - reference to Risk Master X removed.

Section 1.022 Work and Deliverables, #3. Claims Processing, (d) Independent Medical Examinations, #1 Tracking of IME costs and outcomes is required under this Contract. Reports must be provided to the State's CCI on a quarterly basis.

Section 1.042 Reports, (d) Quarterly and Annual Workers' Compensation Database, #3. The data must include, but not be limited to the following: NCCI Codes, Categories and Descriptions for body part, nature, general category and cause; incident detail, work task performed at time of injury, where the event occurred/site and object or substance that directly injured or made the employee ill. The reports must also include claim number, claimant's name, supervisor's name and their respective employee identification number and social security number (potentially to be eliminated), claim status, medical/indemnity, state job classification, shift, and state department and agency, process level, and work site/location codes, descriptions and addresses. The date of injury or onset of illness, claim received date, claim closed date, lost work days from date of injury/illness incident, will also be included. Vocational Rehabilitation (VR) data includes: dates VR was started and closed, claimant's name, vendor company, vendor name, and comments. The following Workers' Compensation costs must also be included: benefit amount, expense amount, medical, indemnity and vocational rehabilitation amounts, special assistant attorney general amounts, other loss adjustment expenses, date claim filed, paid to date (quarterly, fiscal year and lifetime), and current and estimated return to work dates. **The Contractor shall establish criteria for identifying and reporting lost work time days that are acceptable with the State.**

Section 1.042 Reports, (e) Preprogrammed Reports, #4. Annual MIOSHA 300, 300A & 301 logs and reports, Known or Suspected Occupational Disease Report OH-51. **Establish and on-line MIOSHA Report and Process with State departments that provides secure, "real-time" access to each department's MIOSHA reported recordable injury and illness information.**

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

Per Contractor request and DTMB Procurement approval and the approval of the State Administrative Board on July 23, 2013.

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

CHANGE NOTICE NO. 2
 to
CONTRACT NO. 071B1300017
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
CMI, A York Risk Services Company, Inc. 645 W. Grand River, Suite 100 Howell, MI 48843	Scott Gaffner	scott.gaffner@cmi-yorkrsg.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(517) 338-3349	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	DTMB	Ken Swisher	(517) 373-0438	swisherk@michigan.gov
BUYER	DTMB	Lance Kingsbury	(517) 241-3768	kingsburyl@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: Workers' Compensation Thirdy Party Administration Services			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
October 1, 2010	September 30, 2013	2, 1 Yr. Options	September 30, 2013
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS:			
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
<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	<input type="checkbox"/>	<input type="checkbox"/>		
VALUE/COST OF CHANGE NOTICE:		ESTIMATED AGGREGATE CONTRACT VALUE REMAINS:		
\$0.00		\$5,311,530.00		
Effective immediately, the Contractor's name and address has been changed. The buyer has been changed to Lance Kingsbury				
All other terms, conditions, specifications, and pricing remain the same.				
Per Contractor request and DTMB Procurement approval.				

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

November 9 2010

CHANGE NOTICE NO. 1
TO
CONTRACT NO. 071B1300017
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR Citizens Management Inc. 808 North Highlander Way Howell, MI 48843 sgaffner@hanover.com	TELEPHONE Scott Gaffner (517) 540-3177
	CONTRACTOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-4225 Kevin Dunn
Contract Compliance Inspector: Ken Swisher (517) 373-0438 swisher@michigan.gov Workers' Compensation Thirdy Party Administration Services	
CONTRACT PERIOD: From: October 1, 2010 To: September 30, 2013	
TERMS <p style="text-align: center;">N/A</p>	SHIPMENT <p style="text-align: center;">N/A</p>
F.O.B. <p style="text-align: center;">N/A</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	

NATURE OF CHANGE(S):

Section 1.022.3b.3 is hereby replaced by the following language:
 "Overpayment recovery is the responsibility of the Contractor and recoveries must be credited to the appropriate State agency account. All claims, payments and associated claim expenses must be recorded as associated with the individual claim. Claim payments must be made as prescribed by the State of Michigan and the Workers' Disability Compensation Act."

AUTHORITY/REASON:

Vendor request 9/8/2010, agency request 9/8/2010, and DTMB/Procurement & Real Estate Services Administration approval.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$5,311,530.00

FOR THE CONTRACTOR:

Citizens Management, Inc.
 Firm Name

 Authorized Agent Signature

 Authorized Agent (Print or Type)

 Date

FOR THE STATE:

 Signature

Melissa Castro, Acting Division Director
 Name/Title

Service Division, Purchasing Operations
 Division

 Date

STATE OF MICHIGAN
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET September 1, 2010
 PURCHASING OPERATIONS
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48933

**NOTICE
 OF
 CONTRACT NO. 071B1300017
 between
 THE STATE OF MICHIGAN
 and**

NAME & ADDRESS OF CONTRACTOR Citizens Management Inc. 808 North Highlander Way Howell, MI 48843 sgaffner@hanover.com	TELEPHONE Scott Gaffner (517) 540-3177
	CONTRACTOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-0684 Brian Kloeckner
Contract Compliance Inspector: Ken Swisher (517) 373-0438 swisherk@michigan.gov Workers' Compensation Thirdy Party Administration Services	
CONTRACT PERIOD: From: October 1, 2010 To: September 30, 2013	
TERMS <p style="text-align: center;">N/A</p>	SHIPMENT <p style="text-align: center;">N/A</p>
F.O.B. <p style="text-align: center;">N/A</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	
MISCELLANEOUS INFORMATION:	

TOTAL ESTIMATED CONTRACT VALUE: \$5,311,530.00

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

CONTRACT NO. 071B1300017
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR Citizens Management Inc. 808 N. Highlander Way Howell, MI 48843	TELEPHONE Scott Gaffner (517) 540-3177 CONTRACTOR NUMBER/MAIL CODE BUYER/CA (517) 241-0684 Brian Kloeckner
Contract Compliance Inspector: Ken Swisher (517) 373-0438 Workers' Compensation Third Party Administration Services	
CONTRACT PERIOD: From: October 1, 2010 To: September 30, 2013	
TERMS	SHIPMENT
N/A	N/A
F.O.B.	SHIPPED FROM
N/A	N/A
MINIMUM DELIVERY REQUIREMENTS N/A	
MISCELLANEOUS INFORMATION: The terms and conditions of this Contract are those of ITB #07110200097, this Contract Agreement and the vendor's quote dated May 11, 2010. 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: \$5,311,530.00	

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the ITB No. 07110200097. Orders for delivery will be issued directly by the Department of Technology, Management and Budget through the issuance of a Purchase Order Form.

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

<p>FOR THE CONTRACTOR:</p> <p style="text-align: center;">Citizens Management Inc. _____ Firm Name</p> <p style="text-align: center;">_____ Authorized Agent Signature</p> <p style="text-align: center;">_____ Authorized Agent (Print or Type)</p> <p style="text-align: center;">_____ Date</p>	<p>FOR THE STATE:</p> <p style="text-align: center;">_____ Signature Melissa Castro, Division Director</p> <p style="text-align: center;">_____ Name/Title Service Division, Purchasing Operations</p> <p style="text-align: center;">_____ Division</p> <p style="text-align: center;">_____ Date</p>
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STATE OF MICHIGAN
Department of Technology, Management and Budget
Purchasing Operations

Contract No. 071B1300017

Workers' Compensation Third Party Claims Administration Services

Buyer Name: Brian Kloeckner
Telephone Number: (517) 241-0684
E-Mail Address: Kloecknerb@michigan.gov



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DEFINITIONS

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

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

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

Bidder(s) are those companies that submit a proposal in response to 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 Plan Sponsors' computer system.

CCI means Contract Compliance Inspector.

Days mean calendar days unless otherwise specified.

Deleted – N/A means that section is not applicable or included in this 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 the Contract).

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

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

LTD means Long Term Disability

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

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

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



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

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

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

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

SAAG means Special Assistant Attorney General

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

SLA means Service Level Agreement.

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

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

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

TPA means Third Party Administrator

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

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

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

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

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



Article 1 – Statement of Work (SOW)

1.010 Project Identification

1.011 Project Request

This Contract is to provide claims administration for the Workers' Disability Compensation Plan for State of Michigan employees. The Contractor must, in part, provide claims administration, claim processing, claim reporting and record keeping, overpayment recovery, subrogation, return-to-work support, appeals processing, auditing and billing and claims investigation and litigation support. The Contractor must utilize appropriate reserving practices.

1.012 Background

The State of Michigan provides for wage loss and medical payments for workers' compensation disability (work related) injuries and illnesses incurred by state employees. The program is completely self-insured. There is the potential of adding aggregate stop loss coverage for claims exceeding 125% of expected loss levels. If this approach is adopted, the expected loss levels will be established at the beginning of each fiscal year.

General:

The Contract is effective October 1, 2010.

Specific:

The specific services provided by the Contractor, as requested by the State, include claim administration, claim processing, claim investigation, claim reporting and record keeping, safety, overpayment recovery, subrogation, return-to-work support, appeals processing, auditing, litigation support, reserving and billing, for workers' compensation related claim functions involving State of Michigan employees. Initial statewide marketing, promotion and conducting of seminars for state departments are included as part of this Contract. Materials and staffing to accomplish this initial promotional effort should be included in the vendor's price proposal. Compliance with specific directives of the State's CCI shall also be included in the tasks prescribed under this Contract.

1.020 Scope of Work and Deliverables

1.021 In Scope

In scope services include, as requested: claim administration, claim processing, claim investigation, claim reporting and record keeping, safety, overpayment recovery, subrogation, return-to-work support, appeals processing, auditing, reserving and billing, for workers' compensation related claim functions involving State of Michigan employees, as defined by the State.

1.022 Work and Deliverable

Contractor shall provide deliverables/services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below.

1. Claims Intake

The State operates an on line claim reporting system and data base warehouse that includes Workers' Compensation, Long Term Disability (LTD) and incident claims. The system utilizes Riskmaster X, R5. This system will interface with Lawson, the State's HR management system (HRMN). The Contractor must interface with these systems to upload and download all claim information as defined by the State. Electronic interface with the LTD TPA is required.

2. Claims Administration

- a) Account Manager: The Contractor must assign an account manager who will have the primary responsibility for interacting with the State's CCI and also be responsible for resolving any issues relative to the ongoing operation of this contract. The Account Manager must be at a level within the



organization to be able to make decisions on behalf of the Contractor and effect changes that will be upheld by the Contractor without incurring delays. All Contract, policy, and procedure issues involving this Contract are the responsibility of the State's Contract Administrator and CCI, and the Contractor's Account Manager to resolve.

- b) Audits: The State of Michigan will require Contractor to undergo financial and performance audits from outside companies to assure both the financial and operational viability of the disability management programs. These audits will require the Contractor to provide any assistance, detail payment information, data base access, hard copy claim file access, staff access, and space access to the group selected to perform the indicated audit. These audits may be performed annually. In addition, the Auditor General for the State of Michigan may choose to perform an audit based on the Contractor's contractual relationship with the State of Michigan. In such cases, the Contractor is required to provide the same support and cooperation. In either situation, the State's CCI will be involved.
- c) Billing:
1. Billings to the State of Michigan will be agreed upon between the State and the Contractor. It is anticipated that billings for actual services rendered will be presented to the State within a two-week period from the end of the period for which services were provided.
 2. Charges for claims handling expenses must be separated from other service fees and must be so identified on all billing documents.
- d) Fees: The fees established under this Contract are on a per claim basis for handling the standard claims activity associated with disability related claims. This fee is a "per claim" basis and is all-inclusive for that claim activity. Additional service related fees, if not included in the standard per claim fee, must be specifically presented to the State's CCI and agreed to prior to acceptance. Unless otherwise specified, all data and reporting fees must be included in the per claim fee. The basis on which such fees are to be charged must also be provided.
- e) Staffing:
1. The Contractor must provide dedicated, adequate staffing to support all claims processing and support services required by the State of Michigan. Examiner caseloads for standard and litigated claims must be consistent with industry standards as described in various industry publications.
 2. Workers' compensation average caseloads must not exceed 150 open cases. To the extent case loads are determined by the State to be in excess of that necessary to provide the services required by the State, the State and the Contractor will meet and reach a consensus as to appropriate case loads to assure appropriate services are provided. In the event consensus cannot be achieved, the recommendations of the State, with adequate industry data for support, will be instituted.
 3. Staffing must include account manager, claims supervisors, claims examiners, claims processors, medical review technicians, physicians, utilization review specialists, health professionals, psychiatric claim review specialists, case managers, litigation claim specialists, qualified investigators, qualified investigation supervisors, billing specialists, accountants, and data service specialists.
- f) Turnaround Times and Accuracy:
1. The Contractor must provide services as described in this Contract on an accurate and timely basis as described elsewhere in this Contract. Claim accuracy is defined by industry standards. All claims will be processed with at least 95% accuracy.



2. Payment accuracy must meet or exceed 99%. The time frames specified in this Contract are minimum acceptable limits. For workers' compensation claims, three-point contact must be made within three (3) business days from the time the claim is received by the Contractor. This three-point contact must include contact with the employee, the employing agency, and the treating provider. Other timing definitions shall be contained in the specific task descriptions below. All applicable state regulations regarding the timely reporting and notification requirement is the responsibility of the Contractor on behalf of the State of Michigan.

3. Claims Processing

a) Claim File Documentation:

1. Claim files must be documented accurately with all relevant information associated with the particular claim. Sections must be established in the claim file to adequately distinguish between required documentation, legal filings, legal notices, medical information, payments, examiner's notes, etc.
2. Documents within each section must be maintained in chronological order unless otherwise agreed to by the State and the contractor.
3. The use of color-coding is acceptable with adequate documentation of file layout to support such coding. Information in the claim files must be kept current to within 24 hours of receipt. Adequate and accurate documentation is required so as to support any decisions that are being made relative to the claim.
4. Claim files must be accurately reviewed within five (5) business days of receiving a claim. Information necessary to make an informed and accurate decision on the claim must be obtained within 10 business days from receiving the claim.
5. The documentation requirement includes a disability assessment, return to work or transitional employment potential, employer information, treating provider information, and any other documentation that will assist in providing a clear and accurate picture of the true claim status. All claim documents, electronic files, and notepads are the property of the State of Michigan.

b) Claim Payments:

1. Unless otherwise determined by the State of Michigan, the Contractor shall be responsible for processing all claim payments to eligible state employees.
2. The Contractor shall provide claim payments accurately, with a payment error rate of not more than 1%.
3. Overpayments are the responsibility of the Contractor and any recoveries must be credited to the appropriate State agency account. All claim payments and associated claim expenses must be recorded as associated with the individual claim. Claim payments must be made as prescribed by the State of Michigan and the Workers' Disability Compensation Act.

- c) Contact with Employees: The Contractor must contact with claimants within three (3) business days from initial receipt of the claim. As a representative of the State of Michigan, contact with employees by the Contractor must be conducted in a polite and professional manner. Examiners or other representatives of the Contractor who fail to conduct themselves in a manner deemed appropriate by the State of Michigan must be removed from the State account. Specific standards for this evaluation, based on customer surveys conducted by the Contractor and the State will be used to evaluate the Contractor's representatives. The Account Manager and CCI will establish specific evaluation criteria. The decision of the State CCI is final. The Contractor must assist the State of Michigan in developing informational material that informs the employee of their rights under the State's disability programs and must assure that information is readily provided to assist employees. A toll-free number must be



established to allow for toll-free claim reporting and toll-free inquiry and information. The Contractor must provide a telephone recording system for all adjusting staff to be provided for recorded conversations and quality assurance. The State must have access to any recorded conversations.

- d) Independent Medical Examinations (IME's): At a minimum, the Contractor must request IME's when:
- The treating physician is not cooperating or not facilitating communication.
 - There is a question of disability.
 - There are only subjective complaints.
 - There is a question of how a physician is handling a case.
 - There is a need to substantiate medical findings.
1. Tracking of IME costs and outcomes is required under this Contract. Reports must be provided to the State's CCI. Over the past three (3) years, on average 493 IME's have been conducted annually. The trend has been decreasing slightly each year.
- e) Medical Case Management: A medical consultant or medical case manager, defined as an employee with a relevant clinical background in nursing or medicine (RN, MD), must be utilized, at a minimum, in the following situations
1. When an employee is not responding to treatment
 2. When there is a lack of compliance with medical regimen
 3. When there is a chemical dependency
 4. When there is long-term physiotherapy
 5. When there is prescription medication dispensed long-term (over 1 year)
 6. When physician visits are more than is typical for the type of injury/illness
 7. When referrals are more than typical for the type of injury/illness
 8. When prescriptions are more than typical for the type of injury/illness
 9. When the case extends substantially beyond the expected resolution date
 10. When the medical situation is a mix of occupational/non-occupational conditions
 11. When the employee and/or their support system are not capable of coordinating services, setting appointments or comprehending medical needs
 12. When the employee does not comply with medical treatment
 13. When the original injury or illness causes a secondary health problem to occur
- f) Methods for Claim Receipt:
1. The Contractor must be able to receive claims by any method, including telephone (toll-free), facsimile (fax), e-mail, regular mail delivery, electronic data transfer, and Internet based claim service. The Contractor must implement any of these claim-reporting methodologies upon request. Electronic protocols for electronic data transfer will be identified by the State of Michigan at the time such services become available. .
 2. The Contractor must develop, at their own expense, the necessary electronic interfaces or file transfer protocols to allow such electronic file transfer to occur.
 3. The Contractor must also interface with the long-term disability claims administrator.
- g) Subrogation:
1. The Contractor must review and monitor all claims which might involve third-party liability and must pursue subrogation against any and all outside parties for which this subrogation may be appropriate.
 2. The Contractor must document all subrogation standard operating procedures. Contact with the State's CCI is recommended prior to actively pursuing a questionable third-party situation.



3. All amounts received in subrogation must be provided to the State of Michigan as a reduction of the cost of the claim expenses recorded for that specific claim. Subrogation expenses must be included as part of the per claim fees assessed by the Contractor as part of the normal claim fee. This includes bankruptcy court filing and action for overpayment recoveries.

h) Three Point Contact:

1. The Contractor must document all attempts to contact the employee, the employer, and the treating provider, within three (3) business days from the time the claim is received by the Contractor. The information obtained from this Contact must be accurately documented in the claim file. This information will be the basis for any subsequent decisions relative to the payment of the claim and must be placed in the file within 24 hours of receipt.
2. The Contractor must make payment decisions on behalf of the State of Michigan within the parameters described in the relevant statutes and policies of the State.

i) Fraud Investigation:

1. If claimant fraud is detected, the Contractor must conduct investigations.
2. All relevant evidence must be immediately turned over to the State's CCI. The CCI or the appropriate office will maintain responsibility for investigation and will work together with Contractor's fraud unit on an as needed basis.

4. Disability Management

- a) The State of Michigan is active in pursuing return-to-work efforts through its disability management program. Initial claims review includes medical evaluation and review by the Contractor's medical review personnel, disability management transitional employment, departmental return-to-work, and interdepartmental placement. The disability management model used by the State of Michigan has five (5) primary components.
 - At Risk Claims
 - Case Management
 - Vocational Rehabilitation
 - Return-to-Work
 - Disability Management Transitional Employment
- b) At Risk Claims: The State of Michigan promotes the identification of "at risk" situations and circumstances that may lead employees to eventually be placed on one of the State's disability programs. To the extent early identification and intervention can prevent an employee from going off work on a benefit program the State promotes interventions for these "at risk" employees outside of the structure of the disability benefit program.
- c) Case Management:
 1. The State of Michigan promotes case management in each department throughout state government. Each department typically has a Case Manager who is designated as the department's representative dealing with the third-party administrator. There are approximately 30 Department Case Managers.
 2. The Contractor must make all efforts to assist the departmental Case Managers and, when requested, to participate in any case management meetings reasonably scheduled by the department.
 3. The State has identified a Statewide Disability Manager who shall, in conjunction with the State's CCI, coordinate specific case management activities between the state departments and the Contractor. Any case specific issues between the department and the Contractor that cannot be resolved with the Statewide Disability Manager must be referred to the State's CCI and the Contractor's Account Manager. The decision of the State's CCI is final. The State's



CCI, for the purpose of addressing claim specific issues, may also reasonably schedule periodic meetings. The Contractor must provide a senior claims person or case manager to participate in these meetings

d) Vocational Rehabilitation:

1. The State of Michigan supports and promotes the use of vocational rehabilitation services as a means to enhance a claimant's ability to return to work in a more expeditious manner.
2. The Contractor must support this vocational rehabilitation philosophy to assure that state employees receive the most beneficial vocational rehabilitation services possible, consistent with their specific disability situations.
3. The Contractor must utilize vocational rehabilitation providers that are acceptable to the State of Michigan.

e) Return-To-Work:

1. The return-to-work component is a process whereby the employing department and the vocational rehabilitation provider attempts to identify areas within the employee's existing department or other departments where the employee can return to work, with or without accommodation.
2. The Contractor must work with departmental case managers and vocational rehabilitation providers in an attempt to promote this return to work effort, and must assure that the information and documentation necessary to assist case managers is readily available in the claim file.

f) Disability Management Transitional Employment:

1. The State of Michigan is implementing disability management transitional employment throughout state government. This process includes the identification and development of tasks into temporary assignments which employees are placed into for limited periods of time.
2. Disability management transitional employment is only used when an employee would be returning to their regular job. These disability management transitional assignments are intended to be temporary and under normal circumstances, the entire transitional employment process will not exceed six (6) months.
3. While employees are participating in the disability management transitional employment assignments, the Contractor must support the effort and allow the employee entry or re-entry into the benefit program without penalty for participation in the disability management transitional employment program.

5. Recordkeeping

a) Claim File Documentation:

1. All files must be documented in a manner that allows a reviewer the ability to quickly determine the current status of a claim. Files must be documented with all pertinent material related to the claim and such documentation shall be current in the file within 24 hours from the date of receipt by the Contractor.
2. Claim files must be separated to reflect the distinct aspects of the claim. Examples include medical documentation, legal notices, litigation correspondence, payment information, etc. Claim examiner notes must be current within 24 hours and must be electronically generated with hard copies placed in the claim file.
3. Employee Health Management shall have electronic access to, and be able to copy into a Microsoft Office format, all claim information maintained by the third-party administrator. Such



electronic information shall include all information necessary to identify and determine current status and activity for a claim. Care shall be taken to assure that any HIPPA regulations are not violated.

4. The Contractor must continue to provide tax information for any claimant that received benefits from the State of Michigan workers' compensation program while under this Contract. The Contractor must also provide, as requested by the State, copies of canceled checks for any payment that the Contractor may have made to a claimant while under this Contract.

b) Documentation Ownership:

1. All hard copy and electronic claim files, data and documentation associated with all claim files is the property of the State of Michigan, unless specifically agreed to otherwise. Any software developed by the Contractor utilizing funds provided under this Contract is the property of the State of Michigan.
2. Any capital equipment purchased utilizing funds provided under this Contract is the property of the State of Michigan.

c) Freedom of Information Act: The Freedom of Information Act applies to information prepared by the State of Michigan and which is a form, electronic or hard copy, available for reproduction. Reports need not be created, nor are draft notes or draft documents accessible under the Freedom of Information Act. Any and all requests for information under the Freedom of Information Act that relates to files or data maintained by the Contractor on behalf of the State of Michigan must be directed to the State's CCI for proper disposition.

d) State Access to Files: Upon providing reasonable verbal or written notice to the Contractor of the need for such information, the State of Michigan must receive all paper and electronic files and have electronic and paper access to any and all files maintained by the Contractor. All requests for such information must be provided through the State's CCI.

e) The Contractor must continue to provide tax information for any claimant that received benefits from the State of Michigan workers' compensation program while under this Contract. The Contractor must also provide, as requested by the State, copies of canceled checks for any payment that the Contractor may have made to a claimant while under this Contract.

f) State Reporting Requirements: All reporting requirements contained in Insurance Regulations, other State Statutes, Federal Legislation, or State Directives are the responsibility of the Contractor on behalf of the State of Michigan.

6. Litigation Support

a) Coordination:

1. The Contractor must have a claim examiner present at all mediations unless otherwise agreed to between the State and the third-party administrator.
2. Once it is apparent that a claim is going into litigation, the Contractor must notify the appropriate division of the Attorney General's Office, as identified by the State's CCI. The specific process for this notification to occur and the forms and protocols will be established by the Attorney General and the State's CCI, and provided to the Contractor. Any disagreement with the process, documentation or the procedures will be resolved between the Contractor's Account Manager and the State's CCI.



b) File Documentation:

1. The Contractor must provide timely and accurate file documentation to the Attorney General in the form and nature defined by the State of Michigan. The utilization of the Contractor's forms and documents must be with the consent and approval of the State of Michigan.
2. Once a claim is in litigation, the responsibility for the claim rests with the appropriate division within the Attorney General's Office and the staff attorney assigned to the claim.
3. The Contractor must provide any and all support requested by the designated Attorney General's representative in an accurate and timely manner satisfactory to the Attorney General, and subject to agreement between the Contractor's Account Manager and the State's CCI. The Contractor must continue to monitor and provide supporting information for all claims in litigation.

c) Litigation Investigations:

1. Unless determined otherwise by the State, the Contractor must conduct all investigations for the State's workers' compensation claims.
2. Litigated claims are a special component of that process. Once a litigated claim has been assigned to the Contractor for investigation, the designated investigator must contact the assigned Attorney General's representative to determine what the nature of the investigation should be, what type of investigation should occur, what special information or circumstance should be considered, and what special instructions the Attorney General may have for the investigation.
3. The Attorney General or designee will control all investigation activity conducted on behalf of the State of Michigan for all litigated claims, with the advice and consent of the State's CCI.
4. Investigations performed by the Contractor must be performed in a timely manner within parameters established between the investigator and the Assistant Attorney General's representative. On an exception basis, the Attorney General, with concurrence from the State's CCI, will have the authority to identify and select "outside investigators" to perform litigation investigations on behalf of the State of Michigan. Should this occur, the Contractor will be notified.
5. All billings for this outside investigation will be processed through the Attorney General to the Contractor for payment and inclusion in the claim expense documentation.

d) Mediations:

1. Petitions for Hearing received by the Contractor must be provided to the Attorney General within five (5) business days of receiving the petition.
2. A review of the relevant issues and an accurate summary must also be provided within this time frame. For mediations, if it is determined that legal action is required, the Carrier's response to the petition shall be filed within five (5) business days of receipt of the petition.
3. If legal action is required, input will be obtained from the Attorney General and Department Representative within five (5) business days from such determination. Copies of relevant material, as determined by the Attorney General, must be provided to the Attorney General for review and input.
4. For mediations where the Contractor is providing representation, the participant must develop a comprehensive understanding of the relevant issues in the file, clarify the position of the Contractor, and assure concurrence from the Departmental Representative. This must be accomplished 10 business days prior to the mediation.



5. Upon attending mediation, the Contractor’s representative must observe and document the proceedings. Documentation must include, at a minimum, description of the claimant’s physical state, appearance, and demeanor, along with a specific analysis of the claimant’s demands.
 6. If resolution does not take place, a mediation summary must be provided to the Attorney General within five (5) business days of the hearing. If agreement is reached and payment is to be made, payments must be made in accordance with statutory requirements, with proper documentation and notice to all relevant parties.
- e) Pre-Trials:
1. Pre-trial referrals must be made to the Attorney General at least three (3) weeks prior to the pre-trial date.
 2. A quarterly review will be conducted of all litigated files to assure that all documentation and notices are adequate.
 3. The Contractor must acquire and review the summary of the pre-trial hearing and discuss with the Attorney General assigned. Decisions relative to the claim must be promptly documented in the claim file with appropriate notices being provided in a timely manner.
 4. Any payments required must be processed within the time frames and in accordance with statute or procedure established by the State of Michigan.
 5. Any claim going to trial requires the Contractor to perform investigation, acquire documentation, conduct witness interviews, conduct background checks and schedule any medical examinations as requested by the Attorney General assigned to the claim. Accurate and complete documentation is required, along with timely completion of all tasks assigned by the Attorney General.
- f) Fraud Investigation: If claimant fraud is detected, the case, including all relevant evidence, must be immediately turned over to the State’s CCI. The CCI, or the appropriate office, will maintain responsibility for investigation and will interact with Contractor’s fraud unit on an as needed basis.

1.030 Roles and Responsibilities

1.031 Contractor Staff, Roles, and Responsibilities

The State reserves the right to approve the Contractor’s assignment of Key Personnel to this project and to recommend removal of any personnel deemed unsatisfactory by the State.

The State and the Contractor agree that the following personnel are Key Personnel for purposes of this Contract:

- Account Manager
- Dedicated Claims Team Leader
- Senior Clinician
- Implementation Manager
- Lead IT Consultant
- Claim Supervisor
- Others as Agreed Upon by State and Contractor

1.040 Project Plan

1.041 Project Plan Management

Project Control

- a) The Contractor will carry out this project under the direction and control of the CCI, Employee Health Management-Office of the State Employer.



- b) At a minimum, monthly meetings will be conducted with the Contractor's project manager or designee for the purpose of reviewing progress and providing necessary guidance to the contractor in solving problems, which arise. In addition, there will be ongoing communication with the Contract team.
- c) As agreed upon with the CCI the Contractor will submit written summaries of progress outlining the work accomplished during the reporting period; work to be accomplished during the subsequent reporting period; problems, real or anticipated, which should be brought to the attention of the State's CCI; and notification of any significant deviation from previously agreed-upon work plans.
- d) Within 30 working days of the start date of the contract, the Contractor will submit to the Employee Health Management Division CCI a work plan for final approval. The plan must include the following:
 - 1. The Contractor's project organizational structure.
 - 2. The Contractor's staffing table with names and title of key personnel assigned to the project as well as other necessary staff.
 - 3. The project breakdown showing sub-projects, activities and tasks, and resources required and allocated to each for implementation and start-up. Implementation tasks should include marketing, statewide seminars, promotional material, and staffing for all presentations.
 - 4. The time-phased implementation plan in the form of a graphic display, showing each event, task, and decision point in your work plan.
- e) Within 45 days of the start date of the contract, the Contractor will attend a project kick-off meeting to present the proposed implementation plan. This plan will include the Contractor's documented approach for handling existing open claims as of the Contract effective date.

1.042 Reports

Reporting Documentation:

- a) All records and bills must be maintained in a suitable electronic format. The system must be able to convert all the previous years' data into electronic format compatible with Microsoft Office.
- b) Ad Hoc Reports:
 - 1. On an as needed basis, the State's CCI may request Ad Hoc reports. The Contractor must comply with such requests.
 - 2. If the requests are of such magnitude to require additional information technology resources or staffing commitments, the Contractor must document such requirements and provide a cost estimate to the State. Further development of such ad-hoc reports will only proceed with written authorization from the State's CCI.
 - 3. Any requests for ad-hoc reporting must be directed to the State's CCI for review and approval.
- c) Monthly Invoices:
 - 1. Invoices must be provided to the State of Michigan on a monthly basis. Invoices must be provided within 10 working days from the end of the month for which the bill applies.
 - 2. Invoices must include all identifiable costs associated with providing administrative services under this Contract and shall be defined and broken down by department and agency codes. Any changes in the invoices must be confirmed with Employee Health Management. This information shall also be provided on a compact disk.
- d) Quarterly and Annual Workers' Compensation Database
 - 1. The State requires the Contractor to provide a quarterly electronic database (e.g., Microsoft Access) on a compact disc, which reflects claims activity, at a minimum, for the past 10 years.



2. This database must be provided quarterly and must reflect the losses paid in the quarter, the fiscal year and the lifetime as of the valuation date, for claims incurred for the specific years identified in the report. The database includes the payment data, reports and claim details.
3. The database must include the ability to edit reports and run additional customized reports on any combination of the data elements included in the preprogrammed reports.

The employee demographic information will be provided by the State.

The data must include, but not be limited to the following: NCCI Codes, Categories and Descriptions for body part, nature, general category and cause; incident detail, work task performed at time of injury, where the event occurred/site and object or substance that directly injured or made the employee ill. The reports must also include claim number, claimant's name, supervisor's name and their respective employee identification number and social security number (potentially to be eliminated), claim status, medical/indemnity, state job classification, shift, and state department and agency, process level, and work site/location codes, descriptions and addresses. The date of injury or onset of illness, claim received date, claim closed date, lost work days from date of injury/illness incident, will also be included. Vocational Rehabilitation (VR) data includes: dates VR was started and closed, claimant's name, vendor company, vendor name, and comments. The following Workers' Compensation costs must also be included: benefit amount, expense amount, medical, indemnity and vocational rehabilitation amounts, special assistant attorney general amounts, other loss adjustment expenses, date claim filed, paid to date (quarterly, fiscal year and lifetime), and current and estimated return to work dates.

e) Preprogrammed Reports

1. Quarterly Open Claim and Case Management Reports: Each quarter, the Contractor must provide the State's CCI or designees with a report summarizing all open claims. This report shall provide an inventory and breakdown of claims by department /agency.
2. Department and Agency Injury Illness Summary.
3. Top Ten Injury Illness Report.
4. Annual MIOSHA 300, 300A & 301 logs and reports, Known or Suspected Occupational Disease Report OH-51.
5. BWC 701 Notice of Compensation Payments, BWC 100 Employer's Basic Injury, First Report of Injury, Report BWC 107 Notice of Dispute, Return to Work Assessment, First Workers Compensation Check Release, Employee's Report of Injury, Travel Reimbursement Form, Partial Payment Form, First Report of Injury.
6. Settlement Reports: Each quarter the Contractor must provide the State's CCI or designees, a copy of a report that reflects the settlements for State departments for each month of the reporting period. This report must be provided within 15 days from the end of the reporting period and must include monthly and quarterly summaries when appropriate. The information on this report must be broken down by department and must reflect the total dollar amount and number of settlements.
7. Monthly trust account reconciliation report: This report provides a monthly reconciliation of the funds deposited in the TPA's account against the claims that have been actually paid and the checks that have been returned or that may not have cleared the account.
8. Cost containment report: This quarterly report provides a summary of the cost containment efforts on behalf of the state through the use of fee schedule and utilization review efforts. The report must reflect the total billed and the amount saved unitizing each cost containment technique.



9. Rehabilitation Reports: A quarterly report in Excel format that provides, at a minimum, claimant name, rehabilitation vendor, adjuster, date rehabilitation initiated, brief statement of the claim status. A separate report for closed rehabilitation efforts must also include an outline of the reason for closure.

1.050 Acceptance – Deleted/Not Applicable

1.060 Pricing

1.061 Pricing

The State will pay the Contractor a per claim, per employee or flat fee amount that is provided in this Contract for the performance of all activities necessary for or incidental to the performance of work as set forth in this Contract.

For authorized Services and Price List, see Attachment A.

1.062 Price Term

Prices are firm for the entire length of the 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 any resulting Contract are used for the State's exclusive use. Certificates showing exclusive use for the purposes of substantiating a tax-free, or tax-reimbursable sale will be sent upon request. If a sale is tax exempt or tax reimbursable under the Internal Revenue Code, prices must not include the Federal Excise Tax.

1.070 Additional Requirements – Deleted/Not Applicable



**Attachment A
Pricing
(Form A, Form B)**

FORM A

ASO

Self-Insured Workers' Disability Compensation Rating

Self Insured Composite Workers' Comp Rates for New Claims (numbers provided by the State are estimates only and may differ from actual numbers. The State does not commit to purchase in any specific amount)

	Year 1	Year 2	Year 3
Est. Number of employees	50,000	50,000	50,000
Est. Number filed claims Per FY 2009 (Exhibit N):	4,000 New Ind Claims: 741 New Med Claims: 3402	4,000 New Ind Claims: 741 New Med Claims: 3402	4,000 New Ind Claims: 741 New Med Claims: 3402
Per claim (i.e., flat fee)	New Indemnity: \$800 New Medical: \$150	New Indemnity: \$810 New Medical: \$150	New Indemnity: \$820 New Medical: \$150
Total claim set up fees (one-time per claim fee)	Included in flat fee price	Included in flat fee price	Included in flat fee price
Subtotal	Indemnity: \$592,800 <u>Medical: \$510,300</u> Total: \$1,103,100	Indemnity: \$600,210 <u>Medical: \$510,300</u> Total: \$1,110,510	Indemnity: \$607,620 <u>Medical: \$510,300</u> Total: \$1,117,920
Number Annual checks	N/A	N/A	N/A
Check fee	No Charge	No Charge	No Charge
Yearly Administrative Flat Fee	\$350,000	\$360,000	\$370,000
Total cost	\$1,453,100.	\$1,470,510	\$1,487,920



Form B
Self-Insured Workers' Disability Compensation Rating
ASO

(Self-insured take-over claim counts provided by the State are estimates. Actual take-over (claim counts may vary)

	Year 1	Year 2	Year 3
Assumptions	Monthly Maintenance charges will be based on all indemnity claims open beyond 24 months.	Monthly Maintenance charges will be based on all indemnity claims open beyond 24 months.	Monthly Maintenance charges will be based on all indemnity claims open beyond 24 months.
Est. Number of Remaining Open Claims (as of 9/30/2010) [medical & indemnity]	2,200 1,000	1,000 1,000	200 1,000
Open Indemnity Claims Greater than 2 years (24 Months)			
Number of IMEs/FCEs	N/A	N/A	N/A
Monthly Maintenance rates- per claim	\$25	\$25	\$25
Estimated Total Cost	\$300,000	\$300,000	\$300,000



Verification of Included Services for Basic Long-Term Disability ASO Fees	✓ If Services Included in Fees	Fee/Basis	Annual Cost Projection
Informational Brochures – Drafting		X	\$0.00 Project not anticipated
Informational Brochures – Printing		X	\$0.00 Project not anticipated
Extraordinary claim investigation		X	Actual costs Incurred as ALAE charged to file.
Independent medical exams coordination and set up	X		
Additional claim status reports	X		
Actuarial and other services		X	\$0.00 Not anticipated
Travel for meetings/claim investigation	X		
W-2 preparation and distribution			N/A
Social Security assistance			N/A
Standard reports	X		
Ad hoc reports		X	0.00 Charged at time and expense, based on statement of work estimate.
FICA withholding			N/A
Attorney fees		X	Actual Costs Incurred as ALAE charged to file
Doctor/Hospital record fees		X	Actual Costs Incurred as ALAE charged to file
Client On-line access	X		
Dedicated 800#	X		
E-mail set-up/electronic interface	X		
RTW Coordination	X		
Other (specify whether it is ongoing or start-up)			
Medicare Claim Reporting (Ongoing)	X		
Cost Containment Below Fee Schedule (Ongoing) <ul style="list-style-type: none"> ▪ Preferred Provider Network ▪ Utilization Review 		25% Cost of Savings	Variable Cost. Not included in ASO contract fee. Charged to claim as ALAE
Fee Schedule Application (Ongoing)		\$1.25 per line processed	Variable Cost. Not included in ASO contract fee. Charged to claim as ALAE



FORM B

Implementation and Start-Up Costs for Workers' Disability Compensation Program

	Assumptions	1st Year Costs
Cost for planning meetings/program design (# meetings, travel costs)	As incumbent TPA, implementation and start up costs do not apply	\$ 0.00
Cost to provide training to State of Michigan employees (# days/hours included)		\$ 0.00
Cost to populate systems with State of Michigan specific data		\$ 0.00
Cost to train dedicated client team on State of Michigan program requirements		\$ 0.00
Other (Describe in detail)		\$ 0.00
Total Implementation Costs		\$ 0.00



Attachment B

Performance Standards

The Contractor must report on and track the following measures/standards in order to measure compliance with performance. Contractor based performance audits may be verified through external audit activity. The contractor must agree to allow third party audits to measure performance standards.

The State's CCI and Contractor's Account Manager will evaluate performance guarantees. The final decision regarding performance penalties is that of the CCI.

The Contractor must put a percentage of fees at risk for failure to comply with the performance standards. The Contractor agrees to the following performance standards and fees at risk:

Performance Category	Performance Criteria	Standard of performance	2008 actual results	2009 actual results	Willingness to enter into a financial guarantee with State of Michigan? Yes/No	What percentage or dollar fee are you willing to put at risk?
Customer service to claimant and to State of Michigan (per ACD – generated reports)	Telephone response time/wait time	≤ 1 minute	99.9%	99.9%	Yes, with standard of performance at 95%	.25%
	Average speed of answer	30 seconds	6 seconds	7 seconds	Yes	.25%
	Abandonment rate	≤ 5%	3.4%	4.1%	Yes	.25%
	% of calls that get a busy signal	≤ 1%	0%	0%	Yes	.25%
Benefit	Three point contact	Within 72 hours of claim notification. Claim decision within 5 business days of receiving necessary information.	99.3% 99%	99% 98.4%	Yes	1.50%
Clinical involvement/case management – triaging appropriately	Audit results	95% (sample based)	-	-	No – appears subjective	N/A



Performance Category	Performance Criteria	Standard of performance	2008 actual results	2009 actual results	Willingness to enter into a financial guarantee with State of Michigan? Yes/No	What percentage or dollar fee are you willing to put at risk?
Timeliness of payment of claims	Payment must be issued within 7 days of the end of the time period covered by the payment	98% (sample based)	99.3%	100%	Yes, depending on timeliness of client reporting	.50%
Financial accuracy	Total claim dollars paid correctly divided by total dollars paid	99% (sample based)	99.9%	99.9%	Yes	.50%
Claim coding accuracy	% of claims coded accurately divided by total number of claims	95% (sample based)	99.93%	99.81%	Yes	.25%
Data tracking, reporting, analyses, accuracy	Delivery date and accuracy of management reports versus end of reporting period	Delivery within 14 calendar days; accuracy as determined by the State.	Criteria met	Criteria met	Yes, with delivery and accuracy within 20 calendar days. Yes for standard reports, not Ad Hoc	.25%
Account management	Phone or mail based survey of key members of the State's benefits team.	Average of 4 on a 5 point scale.	90.2%	93%	Yes	.50%
Implementation	Ability to comply with all key deliverable dates and timing	Must meet 90% of all implementation criteria.	Criteria met	Criteria met	Yes, with key deliverables being planned and negotiated with client	.25%



Performance Category	Performance Criteria	Standard of performance	2008 actual results	2009 actual results	Willingness to enter into a financial guarantee with State of Michigan? Yes/No	What percentage or dollar fee are you willing to put at risk?
Program outcomes	<ul style="list-style-type: none"> ▪ Duration ▪ # of lost time days ▪ # of claims ▪ Total \$ paid/saved 	Accurate reporting 30 days after the end of the reporting period.	Criteria met	Criteria met	Yes	.25%



Article 2, Terms and Conditions

2.000 Contract Structure and Term

2.001 Contract Term

The Contract is for a period of three (3) years beginning October 1, 2010 through September 30, 2013. All outstanding Purchase Orders must also expire upon the termination (cancellation for any of the reasons listed in **Section 2.150**) of the Contract, unless otherwise extended under the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

2.002 Options to Renew

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

2.003 Legal Effect

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

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

2.004 Attachments & Exhibits

All Attachments and Exhibits affixed to any and all Statement(s) of Work, or appended to or referencing the Contract, are incorporated in their entirety and form part of the 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 the Contract. All orders are subject to the terms and conditions of the Contract. No additional terms and conditions contained on either a Purchase Order or Blanket Purchase Order apply unless they are also specifically contained in that Purchase Order's or Blanket Purchase Order's accompanying Statement of Work. Exact quantities to be purchased are unknown, however, the Contractor must furnish all such materials and services as may be ordered during the CONTRACT period. Quantities specified, if any, are estimates based on prior purchases, and the State is not obligated to purchase in these or any other quantities.

2.006 Order of Precedence

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

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



2.007 Headings

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

2.008 Form, Function & Utility

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

2.009 Reformation and Severability

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

2.010 Consents and Approvals

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

2.011 No Waiver of Default

If a party fails to insist upon strict adherence to any term of the Contract then the party has not waived the right to later insist upon strict adherence to that term, or any other term, of the Contract.

2.012 Survival

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

2.020 Contract Administration

2.021 Issuing Office

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

Brian Kloeckner
Purchasing Operations
Department of Technology, Management and Budget
Mason Bldg, 2nd Floor
PO Box 30026
Lansing, MI 48909
Email: kloecknerb@michigan.gov
Phone: (517) 241-0684

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 Office of the State Employer-Employee Health Management Division, will direct the person named below, or any other person so designated, to monitor and coordinate the activities for the Contract on a day-to-day basis during its term. However, monitoring of the Contract implies **no authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions and**



specifications of the Contract as that authority is retained by DTMB Purchasing Operations. The CCI for the Contract is:

Name: Ken Swisher
Department of Management & Budget
Office of the State Employer – Employee Health Management Division
Address: 400 S. Pine St., 4th Floor
City: Lansing
State & Zip: Michigan 48913
Email: swisherk@michigan.gov
Phone: 517-373-0438

2.023 Project Manager

The following individual will oversee the project:

Name: Ken Swisher
Department of Management & Budget
Office of the State Employer – Employee Health Management Division
Address: 400 S. Pine St., 4th Floor
City: Lansing
State & Zip: Michigan 48913
Email: swisherk@michigan.gov
Phone: 517-373-0438

2.024 Change Requests

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

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

Change Requests:

- (a) By giving Contractor written notice within a reasonable time, the State must be entitled to accept a Contractor proposal for Change, to reject it, or to reach another agreement with Contractor. Should the parties agree on carrying out a Change, a written Contract Change Notice must be prepared and issued under the Contract, describing the Change and its effects on the Services and any affected components of the 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 the Contractor to perform any activities that Contractor believes constitute a Change, the Contractor must notify the State that it believes the requested activities are a Change before beginning to work on the requested activities. If the Contractor fails to notify the State before beginning to work on the requested activities, then the Contractor waives any right to assert any claim for additional compensation or time for performing the requested activities. If the Contractor commences performing work outside the scope of the Contract and then ceases performing that work, the Contractor must, at the request of the State, retract any out-of-scope work that would adversely affect the Contract.

**2.025 Notices**

Any notice given to a party under the Contract must be deemed effective, if addressed to the State contact as noted in Section 2.021 and the Contractor's contact as noted on the cover page of the 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 the Contract. Contractor may change the representatives from time to time upon written notice.

2.027 Relationship of the Parties

The relationship between the State and Contractor is that of client and independent contractor. No agent, employee, or servant of Contractor or any of its Subcontractors must be 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 the Contract.

2.028 Covenant of Good Faith

Each party must act reasonably and in good faith. Unless stated otherwise in the Contract, the parties 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 the Contract.

2.029 Assignments

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

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

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

2.030 General Provisions**2.031 Media Releases**

News releases (including promotional literature and commercial advertisements) pertaining to the RFP and Contract or project to which it relates 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 the Contractor's website, even if the Contractor's documentation specifically referenced that content and attempts to incorporate it into any other communication, unless the State has actual knowledge of the content and has expressly agreed to be bound by it in a writing that has been manually signed by an authorized representative of the State.

2.035 Future Bidding Preclusion

Contractor acknowledges that, to the extent the 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 the 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 the 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 the Contract must specify (or indicate by reference to the appropriate Contract Exhibit) the firm, fixed prices for all Services/Deliverables, and the associated payment milestones and payment amounts. The State may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.

2.042 Adjustments for Reductions in Scope of Services/Deliverables

If the scope of the Services/Deliverables under any Statement of Work issued under the 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 the Contract, the State must not be obligated to pay any amounts in addition to the charges specified in the Contract.

2.044 Invoicing and Payment – In General

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



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

(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 the Contractor.

The specific payment schedule for any Contract(s) entered into, as the State and the 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 the 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

The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of the Contract.

2.047 Final Payment

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

2.048 Electronic Payment Requirement

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

2.050 Taxes

2.051 Employment Taxes

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

2.052 Sales and Use Taxes

Contractors are required to be registered and to remit sales and use taxes on taxable sales of tangible personal property or services delivered into the State. Contractors that lack sufficient presence in Michigan to be required to register and pay tax must do so as a volunteer. This requirement extends to: (1) all members of



any controlled group as defined in § 1563(a) of the Internal Revenue Code and applicable regulations of which the company is a member, and (2) all organizations under common control as defined in § 414(c) of the Internal Revenue Code and applicable regulations of which the company is a member that make sales at retail for delivery into the State are registered with the State for the collection and remittance of sales and use taxes. In applying treasury regulations defining “two or more trades or businesses under common control” the term “organization” means sole proprietorship, a partnership (as defined in § 701(a)(2) of the Internal Revenue Code), a trust, an estate, a corporation, or a limited liability company.

2.060 Contract Management

2.061 Contractor Personnel Qualifications

All persons assigned by Contractor to the performance of Services under the 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 the 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 the Contract only; however, the State understands that the relationship between Contractor and Subcontractor is an independent contractor relationship.

2.062 Contractor Key Personnel

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

(e) The 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, the Contractor may then redeploy the non-Key Personnel.

2.063 Re-assignment of Personnel at the State’s Request

The State reserves the right to require the removal from the Project of Contractor personnel found, in the judgment of the State, to be unacceptable. The State’s request must be written with reasonable detail outlining the reasons for the removal request. Additionally, the State’s request must be based on legitimate, good-faith



reasons. Replacement personnel for the removed person must be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any incident with removed personnel results in delay not reasonably anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Service will not be counted for a time as agreed to by the parties.

2.064 Contractor Personnel Location

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

2.066 Cooperation with Third Parties

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

2.067 Contractor Return of State Equipment/Resources

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

2.068 Contract Management Responsibilities

The Contractor must assume responsibility for all contractual activities, whether or not that Contractor performs them. Further, the State considers the Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the anticipated Contract. If any part of the work is to be subcontracted, the Contract must include a list of Subcontractors, including firm name and address, contact person and a complete description of work to be subcontracted. The State reserves the right to approve Subcontractors and to require the Contractor to replace Subcontractors found to be unacceptable. The Contractor is totally responsible for adherence by the Subcontractor to all provisions of the 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 the 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 the 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 the Contractor cannot immediately replace the removed Subcontractor, the State will agree to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with a removed Subcontractor results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLA for the affected Work will not be counted for a time agreed upon by the parties.

2.073 Subcontractor Bound to Contract

In any subcontracts entered into by Contractor for the performance of the Services, Contractor must require the Subcontractor, to the extent of the Services to be performed by the Subcontractor, to be bound to Contractor by the terms of the Contract and to assume toward Contractor all of the obligations and responsibilities that Contractor, by the Contract, assumes toward the State. The State reserves the right to receive copies of and review all subcontracts, although Contractor may delete or mask any proprietary information, including pricing, contained in such contracts 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 the Contract will not relieve Contractor of any obligations or performance required under the Contract.

2.074 Flow Down

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

2.075 Competitive Selection

The Contractor must select Subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the 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 the Contractor's personnel whom the parties agree will perform the Services/Deliverables at State facilities (collectively, the "State Facilities"). The Contractor must have reasonable access to, and, unless agreed otherwise by the parties in writing, must observe and comply with all rules and regulations relating to each of the State Facilities (including hours of operation) used by the Contractor in the course of providing the Services. Contractor must not, without the prior written consent of the State, use any State Facilities or access any State information systems provided for the Contractor's use, or to which the Contractor otherwise gains access in the course of performing the Services, for any purpose other than providing the Services to the State.

2.090 Security

2.091 Background Checks

On a case-by-case basis, the State may investigate the Contractor's personnel before they may have access to State facilities and systems. The scope of the background check is at the discretion of the State and the results will be used to determine Contractor personnel eligibility for working within State facilities and systems.



The investigations will include Michigan State Police Background checks (ICHAT) and may include the National Crime Information Center (NCIC) Finger Prints. Proposed Contractor personnel may be required to complete and submit an RI-8 Fingerprint Card for the NCIC Finger Print Check. Any request for background checks will be initiated by the State and will be reasonably related to the type of work requested.

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

2.092 Security Breach Notification

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

2.093 PCI Data Security Requirements – 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 the Contract, is marked as confidential, proprietary, or with a similar designation by the State. "Confidential Information" excludes any information (including the 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 the Contract, (ii) acquire any right in or assert any lien against the Confidential Information of the other, or (iii) if requested to do so, refuse for any reason to promptly return 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 the Contract. Disclosure to, and use by, a Subcontractor is permissible where (A) use of a Subcontractor is authorized under the Contract, (B) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Subcontractor's scope of responsibility, and (C) Contractor obligates the Subcontractor in a written Contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor and of any Subcontractor having access or continued access to the State's Confidential Information may be required to execute an acknowledgment that the employee has been advised of Contractor's and the Subcontractor's obligations under this Section and of the employee's obligation to Contractor or Subcontractor, as the case may be, to protect the Confidential Information from unauthorized use or disclosure.



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

2.103 Exclusions

Notwithstanding the foregoing, the provisions 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 the 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 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. The State's representatives must be allowed to inspect, monitor, or otherwise evaluate the work being performed and to the extent that the access will not reasonably interfere or jeopardize the safety or operation of the systems or facilities. Contractor must provide all reasonable facilities and assistance for the State's representatives.

2.112 Examination of Records

For seven years after the Contractor provides any work under the Contract (the "Audit Period"), the State may examine and copy any of Contractor's books, records, documents and papers pertinent to establishing Contractor's compliance with the Contract and with applicable laws and rules. The State must notify the Contractor 20 days before examining the Contractor's books and records. The State does not have the right to review any information deemed confidential by the Contractor to the extent access would require the confidential information to become publicly available. This provision also applies to the books, records, accounts, documents, and papers, in print or electronic form, of any parent, affiliated or subsidiary organization of Contractor, or any Subcontractor of Contractor performing services in connection with the Contract.

2.113 Retention of Records

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

**2.114 Audit Resolution**

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

2.115 Errors

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

2.120 Warranties**2.121 Warranties and Representations**

The Contractor represents and warrants:

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

(b) The Contract Appendices, Attachments, and Exhibits identify the equipment and software and services necessary for the Deliverable(s) to perform and Services to operate in compliance with the 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 the 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 the 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 the 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) The Contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into the Contract, on behalf of Contractor.

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

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



(h) If any of the certifications, representations, or disclosures made in the Contractor’s original bid response change after the Contract start date, the 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 the Contractor breaches any of the warranties contained in this section, the breach may be considered as a default in the performance of a material obligation of the Contract.

2.130 Insurance

2.131 Liability Insurance

The Contractor must provide proof of the minimum levels of insurance coverage as indicated below. The insurance must protect the State from claims which may arise out of or result from the Contractor’s performance of Services under the terms of the Contract, whether the Services are performed by the Contractor, or by any Subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

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

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

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

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

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

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

- 1. Commercial General Liability with the following minimum coverage:
 \$2,000,000 General Aggregate Limit other than Products/Completed Operations
 \$2,000,000 Products/Completed Operations Aggregate Limit
 \$1,000,000 Personal & Advertising Injury Limit
 \$1,000,000 Each Occurrence Limit



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

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

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

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

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

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

4. Employers liability insurance with the following minimum limits:
 \$100,000 each accident
 \$100,000 each employee by disease
 \$500,000 aggregate disease

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

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

7. Professional Liability (Errors and Omissions) Insurance with the following minimum coverage: \$2,000,000.00 each occurrence and \$2,000,000.00 annual aggregate.

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

2.132 Subcontractor Insurance Coverage

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



coverage required in this Section. Subcontractor must fully comply with the insurance coverage required in this Section. Failure of Subcontractor to comply with insurance requirements does not limit Contractor's liability or responsibility.

2.133 Certificates of Insurance and Other Requirements

Contractor must furnish to 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. **THE 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 coverage 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 the Contract or Purchase Order number affected. Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that the State and its agents, officers and employees are listed as an additional insured under each commercial general liability and commercial automobile liability policy. In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

The Contractor must maintain all required insurance coverage throughout the term of the Contract and any extensions and, in the case of claims-made Commercial General Liability policies, must secure tail coverage for at least three years following the expiration or termination for any reason of the 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 the Contract to any indemnified party or other persons. Contractor is responsible for all deductibles with regard to the insurance. If the Contractor fails to pay any premium for required insurance as specified in the Contract, or if any insurer cancels or significantly reduces any required insurance as specified in the Contract without the State's written consent, then the State may, after the State has given the Contractor at least 30 days written notice, pay the premium or procure similar insurance coverage from another company or companies. The State may deduct any part of the cost from any payment due the Contractor, or the Contractor must pay that cost upon demand by the State.

2.140 Indemnification

2.141 General Indemnification

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

2.142 Code Indemnification

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

2.143 Employee Indemnification

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



2.144 Patent/Copyright Infringement Indemnification

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

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

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

2.145 Continuation of Indemnification Obligations

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

2.146 Indemnification Procedures

The procedures set forth below must apply to all indemnity obligations under the Contract.

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

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



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

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

2.150 Termination/Cancellation

2.151 Notice and Right to Cure

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

2.152 Termination for Cause

(a) The State may terminate the Contract, for cause, by notifying the Contractor in writing, if the Contractor (i) breaches any of its material duties or obligations under the 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 the Contract is terminated for cause, the Contractor must pay all costs incurred by the State in terminating the Contract, including but not limited to, State administrative costs, reasonable attorneys' fees and court costs, and any reasonable additional costs the State may incur to procure the Services/Deliverables required by the 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 the Contract, provided the costs are not in excess of 50% more than the prices for the Service/Deliverables provided under the Contract.

(c) If the State chooses to partially terminate the Contract for cause, charges payable under the 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 the Contract that are terminated for cause must cease on the effective date of the termination.

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

2.153 Termination for Convenience

The State may terminate the Contract for its convenience, in whole or part, if the State determines that a termination is in the State's best interest. Reasons for the termination must be left to the sole discretion of the State and may include, but not necessarily be limited to (a) the State no longer needs the Services or products



specified in the Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Services no longer practical or feasible, (c) unacceptable prices for Additional Services or New Work requested by the State, or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any RFP issued by the State. The State may terminate the 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 the Contract in part, the charges payable under the Contract must be equitably adjusted to reflect those Services/Deliverables that are terminated. Services and related provisions of the 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 the Contract extends for several fiscal years, continuation of the Contract is subject to appropriation or availability of funds for the Contract. If funds to enable the State to effect continued payment under the Contract are not appropriated or otherwise made available, the State must terminate the Contract and all affected Statements of Work, in whole or in part, at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Contractor. The State must give Contractor at least 30 days advance written notice of termination for non-appropriation or unavailability (or the time as is available if the State receives notice of the final decision less than 30 days before the funding cutoff).

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

(c) If the State terminates the 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 the Contract immediately and without further liability or penalty in the event Contractor, an officer of Contractor, or an owner of a 25% or greater share of Contractor is convicted of a criminal offense related to a State, public or private Contract or subcontract.

2.156 Termination for Approvals Rescinded

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

2.157 Rights and Obligations upon Termination

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



extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract.

(b) If the State terminates the 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 the 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 the 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 the Contract, and may further pursue completion of the Services/Deliverables under the Contract by replacement contract or otherwise as the State may in its sole judgment deem expedient.

2.158 Reservation of Rights

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

2.160 Termination by Contractor

2.161 Termination by Contractor

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

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

2.170 Transition Responsibilities

2.171 Contractor Transition Responsibilities

If the State terminates the Contract, for convenience or cause, or if the Contract is otherwise dissolved, voided, rescinded, nullified, expires or rendered unenforceable, the Contractor agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. If the Contract expires or terminates, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed 180 days. These efforts must include, but are not limited to, those listed in **Sections 2.171, 2.172, 2.173, 2.174, and 2.175**.

2.172 Contractor Personnel Transition

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



2.173 Contractor Information Transition

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

2.174 Contractor Software Transition

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

2.175 Transition Payments

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

2.176 State Transition Responsibilities

In the event that the Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the State agrees to perform the following obligations, and any others upon which the State and the Contractor agree:

- (a) Reconciling all accounts between the State and the Contractor;
- (b) Completing any pending post-project reviews.

2.180 Stop Work

2.181 Stop Work Orders

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

2.182 Cancellation or Expiration of Stop Work Order

The Contractor must resume work if the State cancels a Stop Work Order or if it expires. The parties will agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract must be modified, in writing, accordingly, if: (a) the stop work order results in an increase in the time required for, or in Contractor's costs properly allocable to, the performance of any part of the Contract; and (b) Contractor asserts its right to an equitable adjustment within 30 calendar days after the end of the period of work stoppage; provided that, if the State decides the facts justify the action, the State may receive and act upon a Contractor proposal submitted at any time before final payment under the Contract. Any adjustment 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 the Contract or any Statement of Work must be resolved as follows. For all Contractor claims seeking an increase in the amounts payable to Contractor under the Contract, or the time for Contractor's performance, Contractor must submit a letter, together with all data supporting the claims, executed by Contractor's Contract Administrator or the Contract Administrator's designee certifying that (a) the claim is made in good faith, (b) the amount claimed accurately reflects the adjustments in the amounts payable to Contractor or the time for Contractor's performance for which Contractor believes the State is liable and covers all costs of every type to which Contractor is entitled from the occurrence of the claimed event, and (c) the claim and the supporting data are current and complete to Contractor's best knowledge and belief.

2.192 Informal Dispute Resolution

(a) All disputes between the parties must be resolved under the Contract Management procedures in the 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 the Contract must be honored in order that each of the parties may be fully advised of the other's position.
- (iii) The specific format for the discussions will be left to the discretion of the designated State and Contractor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.
- (iv) Following the completion of this process within 60 calendar days, the Director of Purchasing Operations, 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 the Contractor and any other entity, except state agencies, concerning responsibility for performance of work under the Contract.

2.193 Injunctive Relief

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

2.194 Continued Performance

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



2.200 Federal and State Contract Requirements

2.201 Nondiscrimination

In the performance of the Contract, Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, or physical or mental disability. Contractor further agrees that every subcontract entered into for the performance of the Contract or any purchase order resulting from the 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 the Contract.

2.202 Unfair Labor Practices

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

2.203 Workplace Safety and Discriminatory Harassment

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

2.204 Prevailing Wage

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

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

2.210 Governing Law

2.211 Governing Law

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

**2.212 Compliance with Laws**

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

2.213 Jurisdiction

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

2.220 Limitation of Liability**2.221 Limitation of Liability**

Neither the Contractor nor the State is liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability does not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of the 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 the Contract.

2.230 Disclosure Responsibilities**2.231 Disclosure of Litigation**

(a) Disclosure. Contractor must disclose any material criminal litigation, investigations or proceedings involving the Contractor (and each Subcontractor) or any of its officers or directors or any litigation, investigations or proceedings under the Sarbanes-Oxley Act. In addition, each Contractor (and each Subcontractor) must notify the State of any material civil litigation, arbitration or proceeding which arises during the term of the Contract and extensions, to which Contractor (or, to the extent Contractor is aware, any Subcontractor) is a party, and which involves: (i) disputes that might reasonably be expected to adversely affect the viability or financial stability of Contractor or any Subcontractor; or (ii) a claim or written allegation of fraud against Contractor or, to the extent Contractor is aware, any Subcontractor by a governmental or public entity arising out of their business dealings with governmental or public entities. The Contractor must disclose in writing to the Contract Administrator any litigation, investigation, arbitration or other proceeding (collectively, "Proceeding") within 30 days of its occurrence. Details of settlements 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 the Contract would cause a reasonable party to be concerned about:

- (i) the ability of Contractor (or a Subcontractor) to continue to perform the 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 the Contract or a violation of Michigan law, regulations or public policy, then the Contractor must provide the State all reasonable assurances requested by the State to demonstrate that:
 - (a) Contractor and its Subcontractors must be able to continue to perform the 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.
 - (4) Contractor must also notify DTMB Purchasing Operations of any payments or obligations owed to the State of Michigan.

2.232 Call Center Disclosure

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

2.233 Bankruptcy

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

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

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

2.240 Performance

2.241 Time of Performance

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

2.242 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 the Contract to the extent the default, damage or delay is caused by government regulations or requirements (executive, legislative, judicial, military, or otherwise), power failure, lightning, earthquake, war, water or other forces of nature or acts of God, delays or failures of transportation, equipment shortages, suppliers' failures, or acts or omissions of common carriers, fire; riots, civil disorders; strikes or other labor disputes, embargoes; injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of a party; provided the non-performing party and its Subcontractors are without fault in causing the default or delay, and the default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans.

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

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

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

2.250 Approval of Deliverables

2.251 Delivery Responsibilities

Unless otherwise specified by the State within an individual order, the following must be applicable to all orders issued under the Contract.

(a) Shipment responsibilities - Services performed/Deliverables provided under the Contract must be delivered "F.O.B. Destination, within Government Premises." The Contractor must have complete responsibility for providing all Services/Deliverables to all site(s) unless otherwise stated. Actual delivery dates must be specified on the individual purchase order.

(b) Delivery locations - Services must be performed/Deliverables must be provided at every State of Michigan location within Michigan unless otherwise stated in the SOW. Specific locations will be provided by the State or upon issuance of individual purchase orders.



(c) Damage Disputes - At the time of delivery to State Locations, the State must examine all packages. The quantity of packages delivered must be recorded and any obvious visible or suspected damage must be noted at time of delivery using the shipper's delivery document(s) and appropriate procedures to record the damage.

Where there is no obvious or suspected damage, all deliveries to a State Location must be opened by the State and the contents inspected for possible internal damage not visible externally within 14 days of receipt. Any damage must be reported to the Contractor within five days of inspection

2.252 Delivery of Deliverables

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

2.253 Testing

(a) Before delivering any of the above-mentioned Statement of Work Physical Deliverables or Services to the State, Contractor must first perform all required quality assurance activities to verify that the Physical Deliverable or Service is complete and conforms with its specifications listed in the applicable Statement of Work or Purchase Order. Before delivering a Physical Deliverable or Service to the State, Contractor must certify to the State that (1) it has performed the quality assurance activities, (2) it has performed any applicable testing, (3) it has corrected all material deficiencies discovered during the quality assurance activities and testing, (4) the Deliverable or Service is in a suitable state of readiness for the State's review and approval, and (5) the Deliverable/Service has all Critical Security patches/updates applied.

(b) If a Deliverable includes installation at a State Location, then Contractor must (1) perform any applicable testing, (2) correct all material deficiencies discovered during the quality assurance activities and testing, and (3) inform the State that the Deliverable is in a suitable state of readiness for the State's review and approval. To the extent that testing occurs at State Locations, the State is entitled to observe or otherwise participate in testing.

2.254 Approval of Deliverables, In General

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

(b) The State's obligation to comply with any State Review Period is conditioned on the timely delivery of Deliverables/Services being reviewed.

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

(d) The State must approve in writing a Deliverable/Service after confirming that it conforms to and performs according to its specifications without material deficiency. The State may, but is not be required to, conditionally approve in writing a Deliverable/Service that contains material deficiencies if the State elects to permit Contractor to rectify them post-approval. In any case, Contractor will be responsible for working diligently to correct within a reasonable time at Contractor's expense all deficiencies in the Deliverable/Service that remain outstanding at the time of State approval.



(e) If, after three opportunities (the original and two repeat efforts), the Contractor is unable to correct all deficiencies preventing Final Acceptance of a Deliverable/Service, the State may: (i) demand that the Contractor cure the failure and give the Contractor additional time to cure the failure at the sole expense of the Contractor; or (ii) keep the Contract in force and do, either itself or through other parties, whatever the Contractor has failed to do, and recover the difference between the cost to cure the deficiency and the contract price plus an additional sum equal to 10% of the cost to cure the deficiency to cover the State's general expenses provided the State can furnish proof of the general expenses; or (iii) terminate the particular Statement of Work for default, either in whole or in part by notice to Contractor provided Contractor is unable to cure the breach. Notwithstanding the foregoing, the State cannot use, as a basis for exercising its termination rights under this Section, deficiencies discovered in a repeat State Review Period that could reasonably have been discovered during a prior State Review Period.

(f) The State, at any time and in its reasonable discretion, may halt the testing or approval process if the process reveals deficiencies in or problems with a Deliverable/Service in a sufficient quantity or of a sufficient severity that renders continuing the process unproductive or unworkable. If that happens, the State may stop using the Service or return the applicable Deliverable to Contractor for correction and re-delivery before resuming the testing or approval process.

2.255 Process For Approval of Written Deliverables

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

2.256 Process for Approval of Services

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

2.257 Process for Approval of Physical Deliverables

The State Review Period for approval of Physical Deliverables is governed by the applicable Statement of Work (and if the Statement of Work does not state the State Review Period, it is by default 30 continuous Business Days for a Physical Deliverable). The State agrees to notify the Contractor in writing by the end of the State Review Period either stating that the Deliverable is approved in the form delivered by the Contractor or describing any deficiencies that must be corrected before approval of the Deliverable (or at the State's election, after approval of the Deliverable). If the State delivers to the Contractor a notice of deficiencies, the



Contractor must correct the described deficiencies and within 30 Business Days resubmit the Deliverable in a form that shows all revisions made to the original version delivered to the State. The Contractor's correction efforts must be made at no additional charge. Upon receipt of a corrected Deliverable from the Contractor, the State must have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Deliverable to confirm that the identified deficiencies have been corrected.

2.258 Final Acceptance

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

2.260 Ownership

2.261 Ownership of Work Product by State

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

2.262 Vesting of Rights

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

2.263 Rights in Data

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

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

2.264 Ownership of Materials

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



2.270 State Standards

2.271 Existing Technology Standards

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

2.272 Acceptable Use Policy

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

2.273 Systems Changes

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

2.280 Extended Purchasing

2.281 MIDEAL

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

The Contractor must supply Contract Services and equipment to these local governmental agencies at the established State of Michigan contract prices and terms to the extent applicable and where available. The Contractor must send its invoices to, and pay the local unit of government, on a direct and individual basis.

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

Please Visit Mi DEAL at www.michigan.gov/buymichiganfirst under MiDeal.

2.282 State Employee Purchases – Deleted/Not Applicable

2.290 Environmental Provision

2.291 Environmental Provision

Hazardous Materials:

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

(a) The Contractor must use, handle, store, dispose of, process, transport and transfer any material considered a Hazardous Material according to all federal, State, and local laws. The State must provide a safe and suitable environment for performance of Contractor's Work. Before the commencement of Work, the State



must advise the Contractor of the presence at the work site of any Hazardous Material to the extent that the State is aware of the Hazardous Material. If the Contractor encounters material reasonably believed to be a Hazardous Material and which may present a substantial danger, the Contractor must immediately stop all affected Work, notify the State in writing about the conditions encountered, and take appropriate health and safety precautions.

(b) Upon receipt of a written notice, the State will investigate the conditions. If (a) the material is a Hazardous Material that may present a substantial danger, and (b) the Hazardous Material was not brought to the site by the Contractor, or does not result in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Materials, the State must order a suspension of Work in writing. The State must proceed to have the Hazardous Material removed or rendered harmless. In the alternative, the State must terminate the affected Work for the State's convenience.

(c) Once the Hazardous Material has been removed or rendered harmless by the State, the Contractor must resume Work as directed in writing by the State. Any determination by the Michigan Department of Community Health or the Michigan Department of Environmental Quality that the Hazardous Material has either been removed or rendered harmless is binding upon the State and Contractor for the purposes of resuming the Work. If any incident with Hazardous Material results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in **Section 2.242** for a time as mutually agreed by the parties.

(d) If the Hazardous Material was brought to the site by the Contractor, or results in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor must bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material according to Applicable Laws to the condition approved by applicable regulatory agency(ies).

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

Refrigeration and Air Conditioning:

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

Environmental Performance:

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

2.300 Other Provisions

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

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

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