

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

November 9, 2012

**CHANGE NOTICE NO. 1**  
 to  
**CONTRACT NO. 071B1300024**  
 between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
National Law Enforcement Telecommunication System  1918 W. Whispering Wind Drive Phoenix, AZ 85085	Crissy Garcia	<a href="mailto:cgarcia@nlets.org">cgarcia@nlets.org</a>
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(623) 308-3500 ext 510	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	DTMB	Barb Suska		suskab@michigan.gov
BUYER	DTMB	Reid Sisson	517-241-1638	sissonr@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: <b>Criminal Justice Network</b>			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
October 1, 2010	September 30, 2013	3, one year	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 REVISED AGGREGATE CONTRACT VALUE:		
\$12,000.00		\$160,000.00		
Effective October 23, 2012, this contract is hereby INCREASED by \$12,000.00. Please also note that the buyer has been changed to Reid Sisson. All other terms, conditions, pricing and specifications remain the same. Per vendor and agency agreement and the approval of DTMB Procurement.				

**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**

October 1, 2010

**NOTICE**  
**OF**  
**CONTRACT NO. 071B1300024**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF CONTRACTOR		TELEPHONE (623) 308-3505 Laura Carter
<b>National Law Enforcement Telecommunication System</b> <b>1918 W. Whispering Wind Drive</b> <b>Phoenix, AZ 85085</b>  <b>Email: <a href="mailto:lcarter@nlets.org">lcarter@nlets.org</a></b>		CONTRACTOR NUMBER/MAIL CODE
		BUYER/CA (517) 373-3993 <b>Dale Reif</b>
Contract Compliance Inspector: Barb Suska <b>Criminal Justice Network</b>		
CONTRACT PERIOD: 3 yrs. + 3 one-year options From: <b>October 1, 2010</b> To: <b>September 30, 2013</b>		
TERMS	N/A	SHIPMENT
F.O.B.	N/A	SHIPPED FROM
MINIMUM DELIVERY REQUIREMENTS		N/A
MISCELLANEOUS INFORMATION:		
<b>Estimated Contract Value: \$144,000.00</b>		

**TOTAL ESTIMATED CONTRACT VALUE: \$144,000.00**

**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. 071B1300024**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF CONTRACTOR  <b>National Law Enforcement Telecommunication System</b> <b>1918 W. Whispering Wind Drive</b> <b>Phoenix, AZ 85085</b>  <p style="text-align: right;">Email: <a href="mailto:lcarter@nlets.org">lcarter@nlets.org</a></p>	TELEPHONE (623) 308-3505 Laura Carter <hr/> CONTRACTOR NUMBER/MAIL CODE <hr/> BUYER/CA (517) 373-3993 <b>Dale Reif</b>
Contract Compliance Inspector: Barb Suska <p style="text-align: center;"><b>Criminal Justice Network</b></p>	
CONTRACT PERIOD: 3 yrs. + 3 one-year options From: <b>October 1, 2010</b> To: <b>September 30, 2013</b>	
TERMS <p style="text-align: center;"><b>N/A</b></p>	SHIPMENT <p style="text-align: center;"><b>N/A</b></p>
F.O.B. <p style="text-align: center;"><b>N/A</b></p>	SHIPPED FROM <p style="text-align: center;"><b>N/A</b></p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;"><b>N/A</b></p>	
MISCELLANEOUS INFORMATION: <b>The terms and conditions of this Contract are those of RFP-DR-084R0200141, this Contract and the Contractor's quote. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.</b>	
<b>Estimated Contract Value: \$144,000.00</b>	

**THIS IS NOT AN ORDER: Orders for delivery will be issued directly by the Department of Corrections through the issuance of a Purchase Order Form.**

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

---

<b>FOR THE CONTRACTOR:</b>	<b>FOR THE STATE:</b>
Firm Name	Signature
Authorized Agent Signature	Dale N. Reif
Authorized Agent (Print or Type)	Name/Title
Date	IT Division
Date	Division
Date	Date



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

Buyer Name: Dale N. Reif  
Telephone Number: (517) 373-3993  
E-Mail Address: reifd@michigan.gov

**Contract Number: 071B1300024**  
**Closed Source Maintenance, Support and User fees for**  
**National Law Enforcement Telecommunication system (NLETS)**  
**Michigan Department of State Police**



**Table of Contents**

<b>Article 1 – Statement of Work (SOW)</b>	<b>8</b>	
<b>1.000 Project Identification/Scope</b>	<b>8</b>	
<b>1.100 Work and Deliverables</b>	<b>8</b>	
<b>1.200 State Roles and Responsibilities</b>	<b>8</b>	
1.201 Contract Compliance Inspector	8	
1.202 Project Manager	8	
<b>1.300 Compensation and Payment</b>	<b>8</b>	
1.301 Compensation And Payment	8	
1.302 Tax Excluded from Price	9	
<b>Article 2, Terms and Conditions</b>	<b>10</b>	
<b>2.000 Contract Structure and Term</b>	<b>10</b>	
2.001 Contract Term	10	
2.002 Options to Renew	10	
2.003 Legal Effect	10	
2.004 Attachments & Exhibits	10	
2.005 Ordering	10	
2.006 Order of Precedence	10	
2.007 Headings	11	
2.008 Form, Function & Utility	11	
2.009 Reformation and Severability	11	
<b>2.010 Consents and Approvals</b>	<b>11</b>	
2.011 No Waiver of Default	11	
2.012 Survival	11	
<b>2.020 Contract Administration</b>	<b>11</b>	
2.021 Issuing Office	11	
2.022 Contract Compliance Inspector –	12	
2.023 Project Manager –	12	
2.024 Change Requests – Deleted N/A	12	
2.025 Notices	12	
2.026 Binding Commitments	12	
2.027 Relationship of the Parties	13	
2.028 Covenant of Good Faith	13	
2.029 Assignments	13	
<b>2.030 General Provisions</b>	<b>13</b>	
2.031 Media Releases	13	
2.032 Contract Distribution	13	
2.033 Permits	13	
2.034 Website Incorporation	13	
2.035 Future Bidding Preclusion	14	
2.036 Freedom of Information	14	
2.037 Disaster Recovery	14	
<b>2.040 Financial Provisions</b>	<b>14</b>	
2.041 Fixed Prices for Services/Deliverables – Deleted N/A	14	
2.042 Adjustments for Reductions in Scope of Services/Deliverables – Deleted N/A	N/A	14
2.043 Services/Deliverables covered – Deleted N/A	14	
2.044 Invoicing and Payment – In General	14	
2.045 Pro-ration	14	
2.046 Antitrust Assignment	14	
2.047 Final Payment	14	
2.048 Electronic Payment Requirement	15	
<b>2.050 Taxes</b>	<b>15</b>	
2.051 Employment Taxes	15	
2.052 Sales and Use Taxes – Deleted N/A	15	
<b>2.060 Contract Management</b>	<b>15</b>	
2.061 Contractor Personnel Qualifications	15	
2.062 Contractor Key Personnel – Deleted N/a	15	
2.063 Re-assignment of Personnel at the State’s REQUEST – Deleted N/A	15	



2.064	Contractor Personnel Location – Deleted N/A	15
2.065	Contractor Identification	15
2.066	Cooperation with Third Parties	15
2.067	Contract Management Responsibilities	15
2.068	Contractor Return of State Equipment/Resources – Deleted N/A	16
<b>2.070</b>	<b>Subcontracting by Contractor</b>	<b>16</b>
2.071	Contractor full Responsibility	16
2.072	State Consent to delegation – Deleted N/A	16
2.073	Subcontractor bound to Contract	16
2.074	Flow Down	16
2.075	Competitive Selection	16
<b>2.080</b>	<b>State Responsibilities</b>	<b>16</b>
2.081	Equipment	16
2.082	Facilities	17
<b>2.090</b>	<b>Security</b>	<b>17</b>
2.091	Background Checks	17
2.092	Security Breach Notification	17
2.093	PCI DATA Security Requirements	17
<b>2.100</b>	<b>Confidentiality</b>	<b>18</b>
2.101	Confidentiality	18
2.102	Protection and Destruction of Confidential Information	18
2.103	Exclusions	18
2.104	No Implied Rights	19
2.105	Respective Obligations	19
<b>2.110</b>	<b>Records and Inspections</b>	<b>19</b>
2.111	Inspection of Work Performed – Deleted N/A	19
2.112	Examination of Records	19
2.113	Retention of Records	19
2.114	Audit Resolution	19
2.115	Errors	19
<b>2.120</b>	<b>Warranties – Deleted N/A</b>	<b>20</b>
<b>2.130</b>	<b>Insurance</b>	<b>20</b>
2.131	Liability Insurance	20
2.132	Subcontractor Insurance Coverage	21
2.133	Certificates of Insurance and Other Requirements	21
<b>2.140</b>	<b>Indemnification – Deleted N/A</b>	<b>22</b>
<b>2.150</b>	<b>Termination/Cancellation</b>	<b>22</b>
2.151	Notice and Right to Cure	22
2.152	Termination for Cause	22
2.153	Termination for Convenience	22
2.154	Termination for Non-Appropriation	22
2.155	Termination for Criminal Conviction	23
2.156	Termination for Approvals Rescinded	23
2.157	Rights and Obligations upon Termination	23
2.158	Reservation of Rights	23
<b>2.160</b>	<b>Termination by Contractor</b>	<b>24</b>
2.161	Termination by Contractor for breach	24
<b>2.170</b>	<b>Transition Responsibilities – Deleted N/A</b>	<b>24</b>
<b>2.180</b>	<b>Stop Work</b>	<b>24</b>
2.181	Stop Work Orders	24
2.182	Cancellation or Expiration of Stop Work Order	24
2.183	Allowance of Contractor Costs	24
<b>2.190</b>	<b>Dispute Resolution</b>	<b>24</b>
2.191	In General	24
2.192	Informal Dispute Resolution	25
2.193	Injunctive Relief	25
2.194	Continued Performance	25



<b>2.200</b>	<b>Federal and State Contract Requirements</b>	<b>25</b>
2.201	Nondiscrimination	25
2.202	Unfair Labor Practices	26
2.203	Workplace Safety and Discriminatory Harassment	26
2.204	Prevailing Wage	26
<b>2.210</b>	<b>Governing Law</b>	<b>26</b>
2.211	Governing Law	26
2.212	Compliance with Laws	26
2.213	Jurisdiction	27
<b>2.220</b>	<b>Limitation of Liability</b>	<b>27</b>
2.221	Limitation of Liability	27
<b>2.230</b>	<b>Disclosure Responsibilities</b>	<b>27</b>
2.231	Disclosure of Litigation	27
2.232	Call Center Disclosure	28
2.233	Bankruptcy	28
<b>2.240</b>	<b>Performance</b>	<b>28</b>
2.241	Time of Performance	28
2.242	Service Level Agreement (SLA) – Deleted N/A	28
2.243	Liquidated Damages – Deleted N/A	28
2.244	Excusable Failure	28
<b>2.250</b>	<b>Approval of Deliverables – Deleted N/A</b>	<b>29</b>
<b>2.260</b>	<b>Ownership</b>	<b>29</b>
2.261	Ownership of Work Product by State – Deleted N/A	29
2.262	Vesting of Rights – Deleted N/A	29
2.263	Rights in Data	29
2.264	Ownership of Materials	30
<b>2.270</b>	<b>State Standards</b>	<b>30</b>
2.271	Existing Technology Standards – Deleted N/A	30
2.272	Acceptable Use Policy	30
2.273	Systems Changes – Deleted N/A	30
<b>2.280</b>	<b>Extended Purchasing – Deleted N/A</b>	<b>30</b>
<b>2.290</b>	<b>Environmental Provision – Deleted N/A</b>	<b>30</b>
<b>2.300</b>	<b>Deliverables – Deleted N/A</b>	<b>30</b>
<b>2.310</b>	<b>Software Warranties – Deleted N/A</b>	<b>30</b>
<b>2.320</b>	<b>Software Licensing – Deleted N/A</b>	<b>30</b>
<b>2.330</b>	<b>Source Code Escrow – Deleted N/A</b>	<b>30</b>
<b>ATTACHMENT A - Cost Table</b>		<b>31</b>



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

**1.000 Project Identification/Scope**

The purpose of this Contract is to provide access for all Michigan criminal justice agencies to all non-Michigan criminal justices information. This service is currently provided to the State by the National Law Enforcement Telecommunication System (NLETS). The purpose of this Contract is to establish a mechanism to pay for the user fees applied to the State of Michigan for access to access all other states criminal justice systems. Michigan State Police is the point of demarcation and provides access to NLETS for all Michigan criminal justice agencies. Access to all other state’s criminal justice information is essential to protect the health, safety and welfare of the citizens of Michigan and its visitors. This is a firm fixed price Contract and the terms are defined in Section 2.001 and 2.002.

**1.100 Work and Deliverables**

**Criminal Justice Network**

Contractor must provide an electronic messaging system to allow information exchange between state, local, and federal agencies and support services to justice-related computer programs. This network must operate primarily through a secure private network through which each state has an interface to the network, and all agencies within the state operate through this interface.

**Help Desk and Technical Support**

Contractor must provide a support telephone number to call to assist users. The support number shall be in operation 24 hours per day, 365 days per year.

Contractor must provide technical support 24 hours per day; 365 days per year, with a minimum response time of 4 hours via a Contractor provided toll-free phone number. Internet support and e-mail to authorized state staff is also acceptable.

The Contractor must provide a private T1 encrypted and firewalled network connection and a full Disaster recovery site.

The State reserves the right to purchase additional software licenses, training, services, maintenance and support. These additional purchases will require an amendment to the Contract and may require approval from the State Administrative Board.

**1.200 State Roles and Responsibilities**

**1.201 CONTRACT COMPLIANCE INSPECTOR**

The Contract Compliance Inspector is responsible to monitor Contract activities on a daily basis.

Name	Agency/Division	Title
Barb Suska	DTMB Purchasing Operations – Contract Administration Unit	Contract Administrator

**1.202 PROJECT MANAGER**

The Project Manager will oversee the project:

Name	Agency/Division	Title
Dave Roach	DTMB Agency Services	

**1.300 Compensation and Payment**

**1.301 COMPENSATION AND PAYMENT**

The user fees will be invoiced as a Firm Fixed Price and paid annually in arrears, consistent with current practices. Contractor will be paid according to Attachment A – Cost Tables.



Contractor will submit properly itemized invoices to “Bill To Address” on the Purchase Order. Incorrect or incomplete invoices will be returned to Contractor.

Invoicing – must provide and itemize, as applicable:

- Contract number
- Purchase order number
- Contractor name, address, phone number, and federal tax identification number;
- Description of the charges and the period of coverage
- Net invoice price for each item;
- Total invoice price;

**Exception:** The State will not pay for any travel expenses, including hotel, mileage, meals, parking, etc. and travel time.

### **1.302 TAX EXCLUDED FROM PRICE**

**Sales Tax:** The State is exempt from sales tax for direct purchases. The Contractor's price must not include sales tax. Purchasing Operations will furnish exemption certificates for sales tax upon request.

**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.



## **Article 2, Terms and Conditions**

### **2.000 Contract Structure and Term**

#### **2.001 CONTRACT TERM**

This Contract is for a period of three (3) years beginning October 1, 2010 through September 30, 2013. All outstanding Purchase Orders must also expire upon the termination 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, shall remain in effect for the balance of the fiscal year for which they were issued.

#### **2.002 OPTIONS TO RENEW**

This Contract may be renewed in writing by mutual agreement of the parties not less than 30 days before its expiration. The Contract may be renewed for up to three (3) additional, one (1) year periods.

#### **2.003 LEGAL EFFECT**

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

Except as otherwise agreed in writing by the parties, the State shall not be liable for costs incurred by Contractor or payment under this Contract, until Contractor is notified in writing that this Contract or Change Order has been approved by the State Administrative Board (if required), signed by all the parties and a Purchase Order against the Contract has been issued.

#### **2.004 ATTACHMENTS & EXHIBITS**

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

#### **2.005 ORDERING**

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

#### **2.006 ORDER OF PRECEDENCE**

The Contract, which consists of the State of Michigan Department of Technology, Management and Budget Purchasing Operations Contract and AAMVA Products and Services Catalog, constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior agreements, whether written or oral, with respect to the subject matter and as additional terms and conditions on the purchase order must apply as limited by **Section 2.005**.

In the event of any conflict between the State's and the Contractor's the terms, conditions and attachments, all documents comprising this contract carry equal weight.



## **2.007 HEADINGS**

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

## **2.008 FORM, FUNCTION & UTILITY**

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

## **2.009 REFORMATION AND SEVERABILITY**

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

### **2.010 Consents and Approvals**

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

## **2.011 NO WAIVER OF DEFAULT**

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

## **2.012 SURVIVAL**

Any provisions of the Contract that impose continuing obligations on the parties, including without limitation the parties' respective warranty, indemnity and confidentiality obligations, survive the expiration or termination of the Contract for any reason for a period of 2 years, with the exception of provisions concerning document retention and auditing, which shall survive for the periods stated. Specific references to survival in the Contract are solely for identification purposes and not meant to limit or prevent the survival of any other section.

### **2.020 Contract Administration**

## **2.021 ISSUING OFFICE**

This Contract is issued by the Department of Technology, Management and Budget, Purchasing Operations and the Michigan State Police (MSP) (collectively, the "State"). Purchasing Operations is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. The Purchasing Operations Contract Administrator for this Contract is:

Dale N. Reif, Buyer  
Purchasing Operations  
Department of Technology, Management and Budget  
Mason Bldg, 2nd Floor  
PO Box 30026  
Lansing, MI 48909  
[reifd@michigan.gov](mailto:reifd@michigan.gov)  
(517) 373-3993

**2.022 CONTRACT COMPLIANCE INSPECTOR –**

Barb Suska  
Purchasing Operations –Contract Administration Unit  
Department of Technology, Management and Budget  
Mason Bldg, 2nd Floor  
PO Box 30026  
Lansing, MI 48909  
Suskab2@michigan.gov  
(517) 335-4067

**2.023 PROJECT MANAGER –****DTMB Project Manager**

Dave Roach  
Department of Technology, Management and Budget (MSP and DMVA)  
333 S. Grand Avenue  
Lansing, MI 48909  
[Roachd2@michigan.gov](mailto:Roachd2@michigan.gov)  
(517) 241-2254

**MSP Project Manager**

Tim Bolles  
Michigan State Police  
Criminal Justice Information Center  
333 S. Grand Avenue  
Lansing, MI 48909  
[bollest@michigan.gov](mailto:bollest@michigan.gov)  
517-241-0603

**2.024 CHANGE REQUESTS – DELETED N/A****2.025 NOTICES**

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

State: State of Michigan  
Purchasing Operations  
Attention: Dale N. Reif  
PO Box 30026  
530 West Allegan  
Lansing, Michigan 48909

Contractor: See contact listed on Contract signature page.

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 giving 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 shall be deemed to be an employee, agent or servant of the State for any reason. Contractor shall be solely and entirely responsible for its acts and the acts of its agents, employees, servants and Subcontractors during the performance of the Contract.

## **2.028 COVENANT OF GOOD FAITH**

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

## **2.029 ASSIGNMENTS**

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

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

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

## **2.030 General Provisions**

### **2.031 MEDIA RELEASES**

News releases (including promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates shall not be made without prior written State approval, and then only in accordance with the explicit written instructions from the State. No results of the activities associated with the 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 shall pay for all costs and expenses incurred in obtaining and maintaining any necessary easements or right of way.

### **2.034 WEBSITE INCORPORATION**

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



### **2.035 FUTURE BIDDING PRECLUSION**

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

### **2.036 FREEDOM OF INFORMATION**

All information in any proposal submitted to the State by Contractor and this Contract is subject to the provisions of the Michigan Freedom of Information Act, 1976 Public Act No. 442, as amended, MCL 15.231, et seq (the "FOIA").

### **2.037 DISASTER RECOVERY**

Contractor and the State recognize that the State provides essential services in times of natural or man-made disasters. Therefore, except as so mandated by Federal disaster response requirements, Contractor personnel dedicated to providing Services/Deliverables under this Contract shall 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 – DELETED N/A**

#### **2.042 ADJUSTMENTS FOR REDUCTIONS IN SCOPE OF SERVICES/DELIVERABLES – DELETED N/A**

#### **2.043 SERVICES/DELIVERABLES COVERED – DELETED N/A**

#### **2.044 INVOICING AND PAYMENT – IN GENERAL**

- (a) Each Statement of Work issued under this Contract shall list (or indicate by reference to the appropriate Contract Exhibit) the prices for all Services/Deliverables, equipment and commodities to be provided, and the associated payment milestones and payment amounts.
- (b) Correct invoices shall be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 Public Act No. 279, MCL 17.51 et seq., within 45 days after receipt, provided the State determines that the invoice was properly rendered.
- (c) Specific details of invoices and payments shall be agreed upon between the Contract Administrator and the Contractor after the proposed Contract Agreement has been signed and accepted by both the Contractor and the Director of Purchasing Operations, Department of Technology, Management & Budget. This activity shall occur only upon the specific written direction from Purchasing Operations.

#### **2.045 PRO-RATION**

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

#### **2.046 ANTITRUST ASSIGNMENT**

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

#### **2.047 FINAL PAYMENT**

The making of final payment by the State to Contractor does not constitute a waiver by either party of any rights or other claims as to the other party's continuing obligations under the Contract, nor shall it constitute a waiver of any claims by one party against the other arising from unsettled claims or failure by a party to comply with this Contract, including claims for Services and Deliverables not reasonably known until after acceptance to be defective or substandard. Contractor's acceptance of final payment by the State under this Contract shall



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

#### **2.048 ELECTRONIC PAYMENT REQUIREMENT**

Electronic transfer of funds is required for payments on State Contracts. Contractors are required to register with the State electronically at <http://www.cpexpress.state.mi.us>. As stated in Public Act 431 of 1984, all contracts that the State enters into for the purchase of goods and services shall provide that payment shall be made by electronic fund transfer (EFT).

#### **2.050 Taxes**

##### **2.051 EMPLOYMENT TAXES**

Contractor shall collect and pay all applicable federal, state, and city employment taxes.

##### **2.052 SALES AND USE TAXES – DELETED N/A**

#### **2.060 Contract Management**

##### **2.061 CONTRACTOR PERSONNEL QUALIFICATIONS**

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

##### **2.062 CONTRACTOR KEY PERSONNEL – DELETED N/A**

##### **2.063 RE-ASSIGNMENT OF PERSONNEL AT THE STATE'S REQUEST – DELETED N/A**

##### **2.064 CONTRACTOR PERSONNEL LOCATION – DELETED N/A**

##### **2.065 CONTRACTOR IDENTIFICATION**

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

##### **2.066 COOPERATION WITH THIRD PARTIES**

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

##### **2.067 CONTRACT MANAGEMENT RESPONSIBILITIES**

Contractor shall be responsible for all acts and omissions of its employees, as well as the acts and omissions of any other personnel furnished by Contractor to perform the Services. Contractor shall have overall responsibility for managing and successfully performing and completing the Services/Deliverables, subject to the overall direction and supervision of the State and with the participation and support of the State as specified in this Contract. Contractor's duties shall include monitoring and reporting the State's performance of



its participation and support responsibilities (as well as Contractor's own responsibilities) and providing timely notice to the State in Contractor's reasonable opinion if the State's failure to perform its responsibilities in accordance with the Project Plan is likely to delay the timely achievement of any Contract tasks.

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

## **2.068 CONTRACTOR RETURN OF STATE EQUIPMENT/RESOURCES – DELETED N/A**

### **2.070 Subcontracting by Contractor**

#### **2.071 CONTRACTOR FULL RESPONSIBILITY**

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

#### **2.072 STATE CONSENT TO DELEGATION – DELETED N/A**

#### **2.073 SUBCONTRACTOR BOUND TO CONTRACT**

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

#### **2.074 FLOW DOWN**

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

#### **2.075 COMPETITIVE SELECTION**

The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the Contract.

### **2.080 State Responsibilities**

#### **2.081 EQUIPMENT**

The State shall provide only the equipment and resources included within the AAMVA Catalog and identified in the Statement of Work and other Contract Exhibits.



## **2.082 FACILITIES**

The State must designate space as long as it is available and as provided in the Statement of Work, to house the Contractor's personnel whom the parties agree will perform the Services/Deliverables at State facilities (collectively, the "State Facilities"). The Contractor shall have reasonable access to, and unless agreed otherwise by the parties in writing must observe and comply with all rules and regulations relating to each of the State Facilities (including hours of operation) used by the Contractor in the course of providing the Services. Contractor agrees that it shall 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, and shall be conducted by and at the sole expense of the State and the results shall be used to determine Contractor personnel eligibility for working within State facilities and systems. The investigations shall 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 shall be initiated by the State and shall be reasonably related to the type of work requested.

All Contractor personnel with access to State facilities and systems, or working on State IT equipment and resources, shall also be expected to comply with the State's security and acceptable use policies for State IT equipment and resources. See PCAcceptableUsePolicy1460\_1\_72034\_7 attached to this contract. Furthermore, Contractor personnel shall be expected to agree to the State's security and acceptable use policies before the Contractor personnel shall be accepted as a resource to perform work for the State that will require access to a State facility or system. It is expected the Contractor shall present these documents to the prospective employee before the Contractor presents the individual to the State as a proposed resource. Contractor staff shall be expected to comply with all Physical Security procedures in place within the facilities where they are working.

#### **2.092 SECURITY BREACH NOTIFICATION**

If the Contractor suffers a breach of a system operated for the State or containing State data, 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 shall cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor must report to the State in writing any use or disclosure of Confidential Information, whether suspected or actual, other than as provided for by the Contract within 10 days of becoming aware of the use or disclosure or the shorter time period as is reasonable under the circumstances.

#### **2.093 PCI DATA SECURITY REQUIREMENTS**

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

Contractor agrees to provide business continuity in the event of a major disruption, disaster or failure as relevant and according to the service description.



The Contractor shall contact the Department of Technology, Management and Budget, Financial Services immediately to advise them of any breaches in security where card data has been compromised. In the event of a security intrusion, the Contractor agrees the Payment Card Industry representative, or a Payment Card Industry approved third party, shall be provided with full cooperation and access to conduct a thorough security review. The review will validate compliance with the Payment Card Industry Data Security Standard for protecting cardholder data. Contractor agrees to properly dispose sensitive cardholder data when no longer needed. The Contractor shall continue to treat cardholder data as confidential upon contract termination.

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

## **2.100 Confidentiality**

### **2.101 CONFIDENTIALITY**

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

### **2.102 PROTECTION AND DESTRUCTION OF CONFIDENTIAL INFORMATION**

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

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

### **2.103 EXCLUSIONS**

Notwithstanding the foregoing, the provisions in this Section shall not apply to any particular information which the State or Contractor can demonstrate (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving party; (iii) was in the possession of the receiving party at the time of disclosure to it without an obligation of



confidentiality; (iv) was received after disclosure to it from a third party who had a lawful right to disclose the information to it without any obligation to restrict its further disclosure; or (v) was independently developed by the receiving party without reference to Confidential Information of the furnishing party. Further, the provisions of this Section shall not apply to any particular Confidential Information to the extent the receiving party is required by law to disclose the Confidential Information, provided that the receiving party (i) promptly provides the furnishing party with notice of the legal request, and (ii) assists the furnishing party in resisting or limiting the scope of the disclosure as reasonably requested by the furnishing party.

#### **2.104 NO IMPLIED RIGHTS**

Nothing contained in this Section must be construed as obligating a party to disclose any particular Confidential Information to the other party, or as granting to or conferring on a party, expressly or impliedly, any right or license to the Confidential Information of the other party.

#### **2.105 RESPECTIVE OBLIGATIONS**

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

#### **2.110 Records and Inspections**

#### **2.111 INSPECTION OF WORK PERFORMED – DELETED N/A**

#### **2.112 EXAMINATION OF RECORDS**

For three years after the Contractor provides any work under this Contract (the "Audit Period"), the State may examine and copy any of Contractor's books, records, documents and papers pertinent to establishing Contractor's compliance with the Contract and with applicable laws and rules. The State shall notify the Contractor 60 days before examining the Contractor's books and records. The State does not have the right to review any information deemed confidential by the Contractor to the extent access would require the confidential information to become publicly available. This provision also applies to the books, records, accounts, documents and papers, in print or electronic form, of any parent, affiliated or subsidiary organization of Contractor, or any Subcontractor of Contractor performing services in connection with the Contract.

#### **2.113 RETENTION OF RECORDS**

Contractor shall maintain at least until the end of the Audit Period all pertinent financial and accounting records (including time sheets and payroll records, and information pertaining to the Contract and to the Services, equipment, and commodities provided under the Contract) pertaining to the Contract according to generally accepted accounting principles and other procedures specified in this Section. Financial and accounting records shall 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 shall 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 shall meet to review each audit report promptly after issuance. The Contractor shall respond to each audit report in writing within 60 days from receipt of the report, unless a shorter response time is specified in the report. The Contractor and the State shall develop, agree upon and monitor an action plan to promptly address and resolve any deficiencies, concerns, and/or recommendations in the audit report.

#### **2.115 ERRORS**

If the audit demonstrates any errors in the documents provided to the State, then the amount in error shall be reflected as a credit or debit on the next invoice following the final audit finding and mutually agreed to by both parties. 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 shall be due as a payment or refund within 45 days of the last quarterly invoice that the balance appeared on or termination of the contract, whichever is earlier.

In addition to other available remedies if the difference between the payment received and the correct payment amount is greater than 10% in favor of the State, then the Contractor shall pay all of the reasonable costs of the audit only if AAMVA is at fault.

**2.120 Warranties – Deleted N/A**

**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 that may arise out of or result from the Contractor's performance of services under the terms of this Contract, whether the services are performed by the Contractor, or by any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

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

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

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

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

See [www.michigan.gov/dleg](http://www.michigan.gov/dleg).

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

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

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

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

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



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

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

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

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

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

**2.132 SUBCONTRACTOR INSURANCE COVERAGE**

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

**2.133 CERTIFICATES OF INSURANCE AND OTHER REQUIREMENTS**

Contractor must furnish to DMB Purchasing Operations, certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). The Certificate must be on the standard "accord" form or equivalent. **The Contract Number or the Purchase Order Number must be shown on the Certificate Of Insurance To Assure Correct Filing.** All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) must contain a provision indicating that coverage afforded under the policies SHALL 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 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 this Contract. The minimum limits of coverage specified above are not intended, and must not be construed; to limit any liability or indemnity of Contractor under this Contract to any indemnified party or other persons. Contractor is responsible for all deductibles with regard to the insurance. If the Contractor fails to pay any premium for required insurance as specified in this Contract, or if any insurer cancels or significantly reduces any required



insurance as specified in this Contract without the State's written consent, then the State may, after the State has given the Contractor at least 30 days written notice, pay the premium or procure similar insurance coverage from another company or companies. The State may deduct any part of the cost from any payment due the Contractor, or the Contractor must pay that cost upon demand by the State.

**2.140 Indemnification – Deleted N/A**

**2.150 Termination/Cancellation**

**2.151 NOTICE AND RIGHT TO CURE**

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

**2.152 TERMINATION FOR CAUSE**

- (a) The State may terminate this contract, for cause, by notifying the Contractor in writing, if the Contractor (i) breaches any of its material duties or obligations under this Contract (including a Chronic Failure to meet any particular SLA), or (ii) fails to cure a breach within the time period specified in the written notice of breach provided by the State
- (b) – DELETED N/A
- (c) If the State chooses to partially terminate this Contract for cause, charges payable under this Contract shall be equitably adjusted to reflect those Services/Deliverables that are terminated and the State must pay for all Services/Deliverables for which Final Acceptance has been granted provided up to the termination date. Services and related provisions of this Contract that are terminated for cause must cease on the effective date of the termination.
- (d) If the State terminates this Contract for cause under this Section, and it is determined, for any reason, that Contractor was not in breach of contract under the provisions of this section, that termination for cause must be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties must be limited to that otherwise provided in this Contract for a termination for convenience.

**2.153 TERMINATION FOR CONVENIENCE**

Either party may terminate this Contract for its convenience, in whole or part, if it determines that a termination is in its best interest. . Either party may terminate this Contract for its convenience, in whole or in part, by giving the other party written notice at least 30 days before the date of termination. If a party chooses to terminate this Contract in part, the charges payable under this Contract must be equitably adjusted to reflect those Services/Deliverables that are terminated. Services and related provisions of this Contract that are terminated for convenience must cease on the effective date of the termination.

**2.154 TERMINATION FOR NON-APPROPRIATION**

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



change the production of Deliverables in the manner and for the periods of time as the State may elect. The charges payable under this Contract shall be equitably adjusted to reflect any equipment, services or commodities not provided by reason of the reduction.

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

### **2.155 TERMINATION FOR CRIMINAL CONVICTION**

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

### **2.156 TERMINATION FOR APPROVALS RESCINDED**

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

### **2.157 RIGHTS AND OBLIGATIONS UPON TERMINATION**

- (a) If the State terminates this Contract for any reason, the Contractor must (a) stop all work as specified in the notice of termination, (b) take any action that may be necessary, or that the State may direct, for preservation and protection of Deliverables or other property derived or resulting from this Contract that may be in Contractor's possession, (c) return all materials and property provided directly or indirectly to Contractor by any entity, agent or employee of the State, (d) transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables intended to be transferred to the State at the termination of the Contract and which are resulting from the Contract (which must be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of the items included compensation to Contractor for the provision of warranty services in respect of the materials), and (e) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract.
- (b) If either party terminates this Contract before its expiration for its own convenience, the State must pay Contractor for all charges due for Services provided before the date of termination and, if applicable, as a separate item of payment under this Contract, for Work In Process, on a percentage of completion basis at the level of completion determined by the State. All completed or partially completed Deliverables prepared by Contractor under this Contract, at the option of the State, becomes the State's property, and Contractor is entitled to receive equitable fair compensation for the Deliverables. Regardless of the basis for the termination, the State is not obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.
- (c) Upon a good faith termination, the State may assume, at its option, any subcontracts and agreements for services and deliverables provided under this Contract, and may further pursue completion of the Services/Deliverables under this Contract by replacement contract or otherwise as the State may in its sole judgment deem expedient.

### **2.158 RESERVATION OF RIGHTS**

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



## **2.160 Termination by Contractor**

### **2.161 TERMINATION BY CONTRACTOR FOR BREACH**

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

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

## **2.170 Transition Responsibilities – Deleted N/A**

## **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**. 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 2.182**.

### **2.182 CANCELLATION OR EXPIRATION OF STOP WORK ORDER**

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

### **2.183 ALLOWANCE OF CONTRACTOR COSTS**

If the Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated for reasons other than material breach, the termination shall be deemed to be a termination for convenience under **Section 2.153**, and the State shall pay reasonable costs resulting from the Stop Work Order in arriving at the termination settlement. For the avoidance of doubt, the State shall not be liable to Contractor for loss of profits because of a Stop Work Order issued under this Section.

## **2.190 Dispute Resolution**

### **2.191 IN GENERAL**

Any claim, counterclaim, or dispute between the State and Contractor arising out of or relating to the Contract or any Statement of Work must be resolved as follows. For all Contractor claims seeking an increase in the amounts payable to Contractor under the Contract, or the time for Contractor's performance, Contractor 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 shall be resolved under the Contract Management procedures in this Contract. If the parties are unable to resolve any dispute after compliance with the processes, the parties must meet with the Director of Purchasing Operations, DMB, or designee, to resolve the dispute without the need for formal legal proceedings, as follows:
- (1) The representatives of Contractor and the State must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information with respect to the matter at issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.
  - (2) During the course of negotiations, all reasonable requests made by one party to another for non-privileged information reasonably related to the Contract shall be honored in order that each of the parties may be fully advised of the other's position.
  - (3) The specific format for the discussions shall be left to the discretion of the designated State and Contractor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.
  - (4) Following the completion of this process within 60 calendar days, the Director of Purchasing Operations, DMB, or designee, shall 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 shall 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 shall not mediate disputes between the Contractor and any other entity, except state agencies, concerning responsibility for performance of work under the Contract.

## **2.193 INJUNCTIVE RELIEF**

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

## **2.194 CONTINUED PERFORMANCE**

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

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

#### **2.201 NONDISCRIMINATION**

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



et seq., and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, et seq., and any breach of this provision may be regarded as a material breach of the Contract.

## **2.202 UNFAIR LABOR PRACTICES**

Under 1980 PA 278, MCL 423.321, et seq., the State shall 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, shall not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Under section 4 of 1980 PA 278, MCL 423.324, the State may void any Contract if, after award of the Contract, the name of Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of Contractor appears in the register.

## **2.203 WORKPLACE SAFETY AND DISCRIMINATORY HARASSMENT**

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

## **2.204 PREVAILING WAGE**

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

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

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

### **2.210 Governing Law**

## **2.211 GOVERNING LAW**

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

## **2.212 COMPLIANCE WITH LAWS**

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



## **2.213 JURISDICTION**

Any dispute arising from the Contract shall 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 shall be 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

The Contractor's liability for any claim for damages to the State is limited to the amount of payments received by the Contractor from the State pursuant to this Agreement during the 12 month period proceeding the date on which such claim arose. The foregoing limitation of liability does not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets. The State's liability for damages to the Contractor is limited to the value of the Contract.

### **2.230 Disclosure Responsibilities**

#### **2.231 DISCLOSURE OF LITIGATION**

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

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

- (a) the ability of Contractor (or a Subcontractor) to continue to perform this Contract according to its terms and conditions, or
- (b) whether Contractor (or a Subcontractor) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in the Proceeding, which conduct would constitute a breach of this Contract or a violation of Michigan law, regulations or public policy, then the Contractor must provide the State all reasonable assurances requested by the State to demonstrate that:
  - (1) Contractor and its Subcontractors will be able to continue to perform this Contract and any Statements of Work according to its terms and conditions, and
  - (2) Contractor and its Subcontractors have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in the Proceeding.
- (c) Contractor shall make the following notifications in writing:
  - (1) Within 30 days of Contractor becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor must notify DMB Purchasing Operations.



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

### **2.232 CALL CENTER DISCLOSURE**

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

### **2.233 BANKRUPTCY**

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

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

### **2.240 Performance**

#### **2.241 TIME OF PERFORMANCE**

- (a) Contractor shall use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables according to the time schedules contained in the Statements of Work and other Exhibits governing the work, and with professional quality.
- (b) Without limiting the generality of **Section 2.241**, Contractor shall notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and must inform the State of the projected actual delivery date.
- (c) If the Contractor believes that a delay in performance by the State has caused or will cause the Contractor to be unable to perform its obligations according to specified Contract time periods, the Contractor 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 AGREEMENT (SLA) – DELETED N/A**

#### **2.243 LIQUIDATED DAMAGES – DELETED N/A**

#### **2.244 EXCUSABLE FAILURE**

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



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

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

The Contractor 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 – Deleted N/A**

#### **2.260 Ownership**

##### **2.261 OWNERSHIP OF WORK PRODUCT BY STATE – DELETED N/A**

##### **2.262 VESTING OF RIGHTS – DELETED N/A**

##### **2.263 RIGHTS IN DATA**

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

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



## **2.264 OWNERSHIP OF MATERIALS**

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

### **2.270 State Standards**

#### **2.271 EXISTING TECHNOLOGY STANDARDS – DELETED N/A**

#### **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 – DELETED N/A**

##### **2.280 Extended Purchasing – Deleted N/A**

##### **2.290 Environmental Provision – Deleted N/A**

##### **2.300 Deliverables – Deleted N/A**

##### **2.310 Software Warranties – Deleted N/A**

##### **2.320 Software Licensing – Deleted N/A**

##### **2.330 Source Code Escrow – Deleted N/A**



**ATTACHMENT A - Cost Table**

<b>Period Covered</b>	<b>Monthly User Fee</b>	<b>Total Annual Fee</b>
10-1-2010 to 9-30-2011	\$ 4,000	\$ 48,000
10-1-2011 to 9-30-2012	\$ 4,000	\$ 48,000
10-1-2012 to 9-30-2013	\$ 4,000	\$ 48,000
<b><i>Contract Total</i></b>		<b>\$ 144,000</b>