Form No. DTMB-3524 (Revised 10/2015)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: No further payment will be made to the previous Contractor name.

STATE OF MICHIGAN

DEPARTMENT OF TECHNOLOGY, MANAGEMENT & BUDGET

PROCUREMENT

525 W. ALLEGAN STREET
LANSING, MI 48933

P.O. BOX 30026
LANSING, MI 48909

CHANGE OF CONTRACTOR NAME and/or TAX ID NUMBER

CHANGE NOTICE NO. 003
to
CONTRACT NO. 071B1300067
between
THE STATE OF MICHIGAN
and

CURRENT NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Centurion INC		
720 Brooker Creek Blvd STE 201	PHONE	CONTRACTOR'S TAX ID NO. (LAST FOUR DIGITS ONLY)
Oldsmar, FL 34677		

NEW NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Centurion Cares Inc.	Bradley Karas	bkaras@centonline.com
720 Brooker Creek Blvd	PHONE	CONTRACTOR'S TAX ID NO. (LAST FOUR DIGITS ONLY)
Oldsmar, FL 34677	727-431-5213	6798

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER / CCI	DTMB	John Walker	313-456-3814	Walkerj5@michigan.gov
DTMB Contract Administrator	DTMB	Michael Breen	517-284-7002	breenm@michigan.gov

CONTRACT SUMMARY			
DESCRIPTION: Contract for IVR Systems for DHS			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	CURRENT EXPIRATION DATE
10/1/2010	9/30/2015	5-1 year	9/30/2017
PAYMENT TERMS		DELIVERY TIMEFRAME	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
☐ P-card ☐ Direct Voucher (DV) ☐ Other			☐ Yes ☒ No
MINIMUM DELIVERY REQUIREMENTS			

DESCRIPTION OF CHANGE NOTICE				
EXERCISE OPTION?	LENGTH OF OPTION	EXERCISE EXTENSION?	LENGTH OF EXTENSION	REVISED EXP. DATE
☐		☐		
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
$1,644,385.00	$0.00	$1,644,385.00		
DESCRIPTION: Name change per vendor request all other terms and conditions remain the same.				

P.O. BOX 30026 LANSING, MICHIGAN 48909

CONTRACT CHANGE NOTICE

Change Notice Number **002**
to
Contract Number **071B1300067**

CONTRACTOR	
	CENTURION INC
	720 Brooker Creek Blvd. Ste. 201
	Oldsmar, FL 34677
	Kirk Wormington
	(727) 431-5300
	kwormington@centonline.com
	*******5477

STATE		
Program Manager	Walker, John	DTMB
	(313) 456-3814	
	walkerj5@michigan.gov	
Contract Administrator	Mike Breen	DTMB
	(517) 284-7002	
	breenm@michigan.gov	

CONTRACT SUMMARY

DESCRIPTION: 5 yr contract for IVR SYS for DHS

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
October 1, 2010	September 30, 2015	5 - 1 Year	September 30, 2016

PAYMENT TERMS	DELIVERY TIMEFRAME

ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
☐ P-card	☐ Direct Voucher (DV)	☐ Other	☐ Yes	☒ No

MINIMUM DELIVERY REQUIREMENTS

DESCRIPTION OF CHANGE NOTICE

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
☒	1 year	☐		September 30, 2017

CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE
$1,644,385.00	$ 0.00	$1,644,385.00

DESCRIPTION: Department of Talent and Development is exercising a one year contract available option with the contract date moved to September 30, 2017. All other terms and conditions remain the same

CENTURION

May 24, 2016

Mr. John K. Walker
Business Relationship Manager
DTMB Customer Service
3024 W. Grand Boulevard - Suite L-500
Detroit, Michigan 48202
Phone: (313) 456-3814

RE: RESPONSE FOR REQUEST TO EXTEND SOFTWARE SUPPORT AND MAINTENANCE FOR THE UIA INTERACTIVE VOICE RECOGNITION (IVR) SYSTEM CONTRACT 071B1300067.

Dear Mr. Walker:

Centurion Cares Inc is pleased to respond to the State's request to extend software support and Maintenance Contract #071B1300067. The extension will be for one year covering the date period, October 1, 2016 thru September 30, 2017. Centurion is providing this Response to the State's extension request with terms of the original Contract No. 071B1300067 remaining in effect.

Sincerely,

Kirk R Wormington
Executive Vice President-Business Development
Centurion Cares Inc.

Florida Address:
200 Emerald Bay Drive, Suite 100 • Oldsmar, FL 34677 • Phone: 727-431-5300 • Fax: 727-431-5299
Wisconsin Address:
1605 Manhattan Drive • Waukesha, WI 53186 • Phone: 262-784-6411 • Fax: 262-784-0687

Form No. DTMB-3521 (Rev. 7/2015)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract change will not be executed unless form is filed

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

CHANGE NOTICE NO. 1
to
CONTRACT NO. 071B1300067
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Centurion inc.	Kirk Wormington	kwormington@centonline.com
720 Brooker Creek Blvd, Ste 201	PHONE	CONTRACTOR'S TAX ID NO. (LAST FOUR DIGITS ONLY)
Oldsmar, FL 34677	(727) 431-5300	5477

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER / CCI	DTMB	John Walker	(313) 456-3814	Walkerj5@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Mike Breen	(517) 284-7002	Breenm@michigan.gov

CONTRACT SUMMARY

DESCRIPTION: IVR SYS for DHS

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
October 1, 2010	September 30, 2015	5, one year	September 30, 2015

PAYMENT TERMS	DELIVERY TIMEFRAME
N/A	N/A

ALTERNATE PAYMENT OPTIONS	EXTENDED PURCHASING
☐ P-card ☐ Direct Voucher (DV) ☒ Other	☐ Yes ☒ No

MINIMUM DELIVERY REQUIREMENTS

N/A

DESCRIPTION OF CHANGE NOTICE

EXERCISE OPTION?	LENGTH OF OPTION	EXERCISE EXTENSION?	LENGTH OF EXTENSION	REVISED EXP. DATE
☒	1 year	☐		September 30, 2016

CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE
$1,644,385.00	$0.00	$1,644,385.00

DESCRIPTION: Effective August 21, 2015, this contract is exercising the first option year. The revised contract expiration date is September 30, 2016. All other terms, conditions, specifications and pricing remain the same. Per contractor and agency request and DTMB Procurement approval.

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

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET **November 3, 2010**
PURCHASING OPERATIONS
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

NOTICE
OF
CONTRACT NO. 071B1300067
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR **Centurion, Inc** **720 Brooker Creek Blvd Ste 201** **Oldsmar, FL 34677** **Email: fstone@centonline.com**	TELEPHONE Fred Stone 402-423-6966 CONTRACTOR NUMBER/MAIL CODE BUYER/CA (517) 373-3993 **Dale Reif**
Contract Compliance Inspector: Patty Bogard **IVR SYS For DHS**	
CONTRACT PERIOD: **5 yrs. + 5 one-year options** From: **10/1/2010** To: **9/30/2015**	
TERMS **N/A**	SHIPMENT **N/A**
F.O.B. **N/A**	SHIPPED FROM **N/A**
MINIMUM DELIVERY REQUIREMENTS **N/A**	
MISCELLANEOUS INFORMATION:	

TOTAL ESTIMATED CONTRACT VALUE: $1,644,385.00

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

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

CONTRACT NO. 071B1300067
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR **Centurion, Inc** **720 Brooker Creek Blvd Ste 201** **Oldsmar, FL 34677** **Email: fstone@centonline.com**	TELEPHONE Fred Stone 402-423-6966 CONTRACTOR NUMBER/MAIL CODE BUYER/CA (517) 373-3993 **Dale Reif**
Contract Compliance Inspector: Patty Bogard **IVR SYS For DHS**	
CONTRACT PERIOD: **5 yrs. + 5 one-year options** From: **10/1/2010** To: **9/30/2015**	
TERMS **N/A**	SHIPMENT **N/A**
F.O.B. **N/A**	SHIPPED FROM **N/A**
MINIMUM DELIVERY REQUIREMENTS **N/A**	
MISCELLANEOUS INFORMATION: **The terms and conditions of this Contract are those of ITB #RFP-DR-084R0200124, this Contract Agreement and the vendor's quote dated 8/23/2010. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.** **Estimated Contract Value: $1,644,385.00**	

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the ITB No. RFP-DR-084R0200124. Orders for delivery will be issued directly by the Department of Energy, Labor and Economic Growth and Department of Human Services through the issuance of a Purchase Order Form.

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

FOR THE CONTRACTOR:	**FOR THE STATE:**
Centurion, Inc. Firm Name	Signature Greg Faremouth, Division Director
Authorized Agent Signature	Name/Title IT Division
Authorized Agent (Print or Type)	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: 071B1300067

Closed Source Maintenance and Support
Michigan Department of Energy, Labor and Economic Growth, Unemployment Insurance Agency
Michigan Department of Human Services, Child Development and Care

Table of Contents

Article 1 – Statement of Work (SOW) ***11***

1.000 Project Identification/Scope **11**

1.100 Scope of Work **11**

1.200 State Roles and Responsibilities **15**
1.201 Contract Compliance Inspector 15
1.202 Project Manager 15

1.300 Compensation and Payment **16**
1.301 Compensation And Payment 16
1.302 Tax Excluded from Price 16

1.400 IT Specific Requirements **16**
1.401 Contract management 16
1.402 Contractor Identification 20
1.403 Environment 20

Article 2 - Terms and Conditions ***22***

2.000 Contract Structure and Term **22**
2.001 Contract Term 22
2.002 Options to Renew 22
2.003 Legal Effect 22
2.004 Attachments & Exhibits 22
2.005 Ordering 22
2.006 Order of Precedence 22
2.007 Headings 22
2.008 Form, Function & Utility 23
2.009 Reformation and Severability 23

2.010 Consents and Approvals **23**
2.011 No Waiver of Default 23
2.012 Survival 23

2.020 Contract Administration **23**
2.021 Issuing Office 23
2.022 Contract Compliance Inspector 23
2.023 Project Manager 24
2.024 Change Requests 24
2.025 Notices 25
2.026 Binding Commitments 25
2.027 Relationship of the Parties 26
2.028 Covenant of Good Faith 26
2.029 Assignments 26

2.030 General Provisions **26**
2.031 Media Releases 26
2.032 Contract Distribution 26
2.033 Permits 26
2.034 Website Incorporation 26
2.035 Future Bidding Preclusion 27
2.036 Freedom of Information 27
2.037 Disaster Recovery 27

2.040 Financial Provisions **27**
2.041 Fixed Prices for Services/Deliverables 27
2.042 Adjustments for Reductions in Scope of Services/Deliverables 27
2.043 Services/Deliverables Covered 27
2.044 Invoicing and Payment – In General 27
2.045 Pro-ration 28
2.046 Antitrust Assignment 28
2.047 Final Payment 28
2.048 Electronic Payment Requirement 28

2.050 Taxes **28**
2.051 Employment Taxes 28
2.052 Sales and Use Taxes 28

2.060	**Contract Management**	**29**
2.061	Contractor Personnel Qualifications	29
2.062	Contractor Key Personnel – deleted na	29
2.063	Re-assignment of Personnel at the State's Request	29
2.064	Contractor Personnel Location	29
2.065	Contractor Identification	29
2.066	Cooperation with Third Parties	29
2.067	Contract Management Responsibilities	29
2.068	Contractor Return of State Equipment/Resources	30
2.070	**Subcontracting by Contractor**	**30**
2.071	Contractor full Responsibility	30
2.072	State Consent to delegation	30
2.073	Subcontractor bound to Contract	30
2.074	Flow Down	30
2.075	Competitive Selection	31
2.080	**State Responsibilities**	**31**
2.081	Equipment	31
2.082	Facilities	31
2.090	**Security**	**31**
2.091	Background Checks	31
2.092	Security Breach Notification	31
2.093	PCI DATA Security Requirements	31
2.100	**Confidentiality**	**32**
2.101	Confidentiality	32
2.102	Protection and Destruction of Confidential Information	32
2.103	Exclusions	33
2.104	No Implied Rights	33
2.105	Respective Obligations	33
2.110	**Records and Inspections**	**33**
2.111	Inspection of Work Performed	33
2.112	Examination of Records	33
2.113	Retention of Records	33
2.114	Audit Resolution	34
2.115	Errors	34
2.120	**Warranties**	**34**
2.121	Warranties and Representations	34
2.122	Warranty of Merchantability – deleted na	35
2.123	Warranty of Fitness for a Particular Purpose – deleted na	35
2.124	Warranty of Title – deleted na	35
2.125	Equipment Warranty – deleted na	35
2.126	Equipment to be New – deleted na	35
2.127	Prohibited Products – deleted na	35
2.128	Consequences for Breach – deleted na	35
2.130	**Insurance**	**35**
2.131	Liability Insurance	35
2.132	Subcontractor Insurance Coverage	36
2.133	Certificates of Insurance and Other Requirements	37
2.140	**Indemnification**	**37**
2.141	General Indemnification	37
2.142	Code Indemnification	37
2.143	Employee Indemnification	37
2.144	Patent/Copyright Infringement Indemnification	38
2.145	Continuation of Indemnification Obligations	38
2.146	Indemnification Procedures	38
2.150	**Termination/Cancellation**	**39**
2.151	Notice and Right to Cure	39
2.152	Termination for Cause	39
2.153	Termination for Convenience	39
2.154	Termination for Non-Appropriation	40
2.155	Termination for Criminal Conviction	40
2.156	Termination for Approvals Rescinded	40

	2.157 Rights and Obligations upon Termination	40
	2.158 Reservation of Rights	41
2.160	**Termination by Contractor**	**41**
	2.161 Termination by Contractor	41
2.170	**Transition Responsibilities**	**41**
	2.171 Contractor Transition Responsibilities	41
	2.172 Contractor Personnel Transition	41
	2.173 Contractor Information Transition	42
	2.174 Contractor Software Transition	42
	2.175 Transition Payments	42
	2.176 State Transition Responsibilities	42
2.180	**Stop Work**	**42**
	2.181 Stop Work Orders	42
	2.182 Cancellation or Expiration of Stop Work Order	42
	2.183 Allowance of Contractor Costs	43
2.190	**Dispute Resolution**	**43**
	2.191 In General	43
	2.192 Informal Dispute Resolution	43
	2.193 Injunctive Relief	43
	2.194 Continued Performance	44
2.200	**Federal and State Contract Requirements**	**44**
	2.201 Nondiscrimination	44
	2.202 Unfair Labor Practices	44
	2.203 Workplace Safety and Discriminatory Harassment	44
	2.204 Prevailing Wage	44
2.210	**Governing Law**	**45**
	2.211 Governing Law	45
	2.212 Compliance with Laws	45
	2.213 Jurisdiction	45
2.220	**Limitation of Liability**	**45**
	2.221 Limitation of Liability	45
2.230	**Disclosure Responsibilities**	**45**
	2.231 Disclosure of Litigation	45
	2.232 Call Center Disclosure	46
	2.233 Bankruptcy	46
2.240	**Performance**	**46**
	2.241 Time of Performance	46
	2.242 Service Level Agreement (SLA)	47
	2.243 Liquidated Damages	47
	2.244 Excusable Failure	48
2.250	**Approval of Deliverables – Deleted NA**	**49**
2.260	**Ownership – Deleted NA**	**49**
2.270	**State Standards**	**49**
	2.271 Existing Technology Standards	49
	2.272 Acceptable Use Policy	49
	2.273 Systems Changes	49
2.280	**Extended Purchasing – Deleted NA**	**49**
2.290	**Environmental Provision – Deleted NA**	**49**
2.300	**Deliverables – Deleted NA**	**49**
2.310	**Software Warranties – Deleted NA**	**49**
2.320	**Software Licensing – Deleted NA**	**49**
2.330	**Source Code Escrow – Deleted NA**	**49**
Glossary		***50***
ATTACHMENT A		***52***

Article 1 – Statement of Work (SOW)

1.000 Project Identification/Scope

The purpose of this Contract is for a multi-year contract to provide software maintenance and software support for the Covered Software defined in Section 1.100. The contract awarded from this solicitation will be a firm, fixed-priced contract for a period of five (5) years with up to five (5) one-year options to renew.

The Department of Technology, Management and Budget (DTMB), Agency Services has requested to purchase Interactive Voice Response (IVR) application software maintenance for the following Agencies' programs:

- The Department of Energy, Labor and Economic Growth (DELEG), Unemployment Insurance Agency's (UIA) applications, Michigan Automated Response Voice Interactive Network (MARVIN) self-help Certification system, and its self-help Initial Claims (Telephone–Filed Claims) system.
- The Department of Human Services' (DHS) applicatons, Child Development and Care (CDC) and Adoption Subsidy programs.

1.100 Scope of Work

Scope of Work for DELEG/UIA:

DELEG/UIA's IVR system provides automated Unemployment Benefits Applications for "New" and "Additional" claims, as well as "Claimant Certification" which is the process used to assure that a claimant is still unemployed and seeking work, to ensure Unemployment Insurance (UI) eligibility requirements. The IVR system provides telephone access to the Agency's IT environment and constitutes the backbone of the Telephone-Filed Claims (TFC) system. It has essentially replaced the 50+ UIA branch offices that had utilized in-person claims processing to provide UI benefits. It is one of two mechanisms available to Michigan citizens to apply for UI benefits (The other is the Internet Filed Claims (IFC) system, which processes claims via the Web.) The IVR-based TFC system reaches claimants that do not have Internet access or who have questions or require help. Consequently, it is essential to maintain the IVR system and provide high reliability for this automated system.

Maintenance for "break/fix" services includes remote alarm and intervention services 8:00am to 5:00pm business days. Specialty application software for text-to-speech, right-to-use, and annual maintenance is included for the self-help Certification system (MARVIN), and the self-help Initial Claims (Telephone-Filed Claims) system.

Covered Software

The Contractor must be able to support and maintain the following:

- Original MARVIN Application plus enhancements – operating on 7 (seven) Avaya Conversant UCS 1000 IVR's
- Original MARVIN Application plus enhancements – operating on 2 (two) Windows-based web servers
- Original Initial Claims Application plus enhancements operating on 4 (four) Avaya Conversant UCS 1000 IVR's
- Development environment operating on 1 (one) Avaya Conversant UCS 1000 IVR
- Nuance Text-to-Speech Annual Support

Scope of Work for DHS:

DHS' - CDC IVR system requires that parents report and verify the amount of time that their children are cared for in order to provide verification of care and to help validate the provider's reported care hours. Parents will be required to report not only their daily need hours per pay period, but the total hours of child care needed per pay period. CDC IVR also requires that providers report the children and number of hours care is provided by submitting billings to MDHS. The Attendance Certification System

will provide MDHS staff with the inquiry and reporting tools to validate the input from both providers and parents to identify discrepancies and make payments. If providers do not have internet access, they must use the IVR. The CDC IVR program within MDHS ensures that qualifying children are properly cared for while MDHS clients are at work or looking for work. The IVR system is one of the two mechanisms for daycare providers to report the children in their care and for parents to report the amount of time their children are cared for. If the reporting is not done, payments are not made and the children may be turned away from the care facility. The IVR for the Adoption Subsidy program is used to survey parents who are responsible for the health and safety of Michigan children. The Adoption Subsidy IVR is used to interface with adoptive parents who are responsible for the health and safety of Michigan children. Maintenance for “break/fix” services includes remote alarm and intervention services 24x7.

DHS’ IVR systems provide automated services used to meet reporting requirements and to ensure clients meet eligibility requirements of the program they are enrolled in. (The other mechanism is an Internet based I-Billing system). The IVR systems reaches clients and/or service providers

Covered Software

The Contractor must be able support and maintain the following:

- All software applications created by the Contractor for the Michigan Department of Human Services, Child Day Care program
- Automated Billing Application for Providers and Clients
- Inquiry Application
- Adoption Subsidy Application

Software Maintenance

- Contractor will provide the software maintenance and support services listed in this Section to the State for the Covered Software while the annual maintenance fee for the Current Release of the particular Covered Software is in effect and paid in full. Contractor will use reasonable efforts to correct any failure in the Covered Software identified by the State in writing.

- Contractor shall provide Upgrades to the standard version of the Covered Software at no additional cost to the State. Upgrades” shall mean updated, upgraded, or revised versions of the Covered Software which may include Error corrections and other enhancements that Contractor makes available to its customers at no additional charge. Upgrades shall not include any new releases which contain substantially new or different function.

- The Contractor must provide maintenance for the current installed version and on all future software updates and system enhancements applicable to system modules licensed to the State.

- The Contractor will provide the state with information on software problems encountered at other installations along with the solution to those problems, when such information is relevant to State software.

- The Contractor must notify the State of any material errors or defects in the products licensed to the state, or made known to Contractor from any source during the Contract term that could cause the production of inaccurate, or otherwise materially incorrect, results and shall initiate actions as may be commercially necessary or proper to effect corrections of any such errors or defects.

Software Support Services

- During the term of this Contract, Contractor will provide the support services described in this Section to maintain the Covered Software in good working order, free from material defects so that the Covered Software shall function properly and in accordance with the accepted level of performance as set forth in the License Agreement.

- Contractor will make available to the State a support telephone number to call when requesting service of the Covered Software. The support number shall be in operation during State business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding State holidays.

- Contractor must provide technical support from 8 a.m. to 5 p.m. EST; Monday through Friday 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.

- At no additional cost to the State, Contractor must remedy any software bugs, fixes, enhancements, new releases and updates/upgrades.

- The Contractor must provide advanced notice of all software bugs, fixes, enhancements, new releases and updates/upgrades.

- All software bugs, fixes, enhancements, new releases and updates/upgrades must be delivered as mutually agreed upon. The Contractor must provide support for software bugs, fixes, enhancements, new releases and updates/upgrades to ensure an operational production environment.

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

The Contractor's Monitoring service
Centurion Guard is an automated monitoring service that has been designed and developed by the Contractor to monitor client Communication Server specified operational activity on a 24 x 7 hour basis. If a problem is detected, Centurion Guard enters a message into the Windows Event Log with a unique priority level based upon whether the category of the error is *Informational*, *Minor*, *Major* or *Critical*. The logged message is coded as to whether it is one that must be sent to the Contractor's Network Operations Center (NOC) for prompt action.

After adding the client identity to the error message, it is formatted into an encrypted packet and transmitted via secure VPN connectivity to the Contractor's NOC server. In a parallel manner, the error message is also delivered in email format to the Contractor's Help Desk for review and tracking assurance. Statistics show that on average, within 30 – 60 seconds of error detection the Contractor's NOC is aware of the situation.

Upon receipt of the notification, a Technical Service team member reviews the assigned priority level to determine the severity of the issue. During normal business hours the error message will be directed to a Contractor's Help Desk team member for resolution. After business hours, a Technical Service team member is will be notified via email or PDA messaging for prompt action. The Technical Service team member will log into the effected Communication Server and while in a terminal user mode, implement a resolution to return the client system to full operation in the shortest time frame possible.

In addition to monitoring system operations, Centurion Guard will deliver a specially formatted message to the Contractor's NOC server every 5 minutes to indicate that the client system is operating without problems. If the server does not record receipt of communication within a 15 minute time frame, an error notification will be generated within the Contractor's NOC. The Contractor will provide technical Service team member to initiate communication with the client Communication Server to verify that it is operating successfully. Additionally, event notification could also be made to the client support staff notifying them that communication has stopped.

Due to the diverse scope of individual processing needs in place across our extensive client base, determination of which events are to be monitored and entered into the Windows Event Log will be established at the individual client level. When events defined through this procedure occur, notification will be forwarded to the Technical Service team member on duty. When the client notifies the

Contractor's NOC by phone or email that operational interruptions are scheduled or anticipated, notifications resulting from the operational interrupt will not be acted upon.

Typical notifications initiated by Centurion Guard are reflected by the sampling that follows below. In each case, an informative message is entered into the Windows Event Log which initiates notification to the Contractor's NOC.

- Network connectivity has been lost:
  The Centurion Guard application is unable to send the standard *'operational'* message to the Customer Care Center server at its prescribed 5 minute interval.
- Centurion Guard/Host System connectivity interrupt:
  The Contractor's host system interface application has informed Centurion Guard of various losses of connectivity or response timeout issues.
- Database problems:
  Beyond the established database error reporting such as information relative to extents and rollback warnings for example, Centurion Guard contains scripts that validate the database as well. This front line review enables the Technical Service team member to approach problem resolution within seconds of detection.
- Specific digital voice T-1 issues (red, yellow and blue alarms)
  Some versions of the Intel Dialogic T-1 components contain hardware diagnostic functionality that continuously monitors the T-1 line to the switch.
- Warning of insufficient free disk space:
  Centurion Guard contains the functionality to monitor the availability of hard disk space in the Communication Server by interacting with the operating system software. Based upon localized parameters that were put in place upon installation, availability percentages are calculated and warnings are generated when the defined threshold is approached.
- System resources have reached limited thresholds:
  Other various specialized scripts can be defined and implemented to monitor the Communication Server resources or client-specific needs as required.

To facilitate the most expedient resolution of a problem, the Contractor's applications have been designed to enable our support team to access a client system via a secure VPN connection and appropriate communication software. This is performed as easily from a remote terminal as from the local console and enables our support team to logically operate in a terminal user mode with the client system. By initiating commands to check programs, re-creating problem situations, or implementing modifications our Technical Service team can resolve problems and return the client system to full operation in the shortest possible time.

In those instances when the problem is not related to the Communication Server and associated software, such as when a host system or network is determined to be the root cause, the Technical Service team member will notify the clients appointed support contact to inform them of the problem status. The client will then have the opportunity to determine what actions are to be taken, such as whether to proceed with problem resolution immediately or to wait until the next business day.

The Contractor's IVR Support Plan

The Contractor places a high priority on the development of reliable, high performance software. The IVR application and the Windows 2003 hardware platforms have been designed to allow most administration and maintenance functions to be performed as easily from a remote terminal as from the system console. Each system incorporates remote maintenance functions that enable the Contractor's support technician to perform system diagnostics and trouble shooting from a support facility via a dialup modem. These features will resolve most system problems without operational interrupts or system down time.

Even without subscribing to the Application Software Maintenance Agreement, the Contractor remains available to provide support. In this case, all enhancements and assistance will be made available on a Time & Material basis, at our then current rate, billed in ½ hour increments.

Priority Definitions

Priority	Description
Critical (1)	Client system or application is inoperable in a production environment. All work has stopped and the situation is causing a critical impact to Client business operation and productivity. No work around is available.
Major (2)	Client system or application is severely limited, the voice quality is degraded, port failure is in excess of 10%, or other problems are present that impair the agency from delivering its intended level of service in a production environment. The situation is causing a negative impact to major portions of Client business and productivity. No work around is available. The system or application may have been interrupted but recovered, with a high risk of reoccurrence.
Minor (3)	A problem was encountered in a production environment; an irritant, minimal impact to business operation is present; localized or isolated impact; operational nuisance, documentation errors.
No impact (4)	General questions, information requests in a production environment.

Response Time Matrix

Severity	Priority	Contact Goal	Relief Goal	Resolution Goal	Contact method
Critical	1	15 minutes	24 hours	30 days	Phone only
Major	2	15 minutes	48 hours	90 days	Phone only
Minor	3	24 hours	5 business days	180 days	Phone, email, fax
No Impact	4	24 hours	N/A	N/A	Phone, email, fax

Additional Requirements for DELEG/UIA & DHS:

Time & Materials Block of Hours
A block of "Time & Materials" hours (not to exceed 500 hours/per year/per Agency) will be established to address future federally-mandated enhancements/requirements and/or work not covered under the standard maintenance and support services described above. The State reserves the right to purchase additional services if necessary.

Services drawn from this contract will be dependent upon individual and mutually agreed upon statement(s) of work between Contractor and the State of Michigan. Once agreed to, Contractor shall not be obliged or authorized to commence any work to implement a statement of work until authorized via a purchase order issued against this contract.

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
Patty Bogard	DTMB Purchasing Operations – CA Unit	Contract Administrator
Ann Lindberg	DTMB Agency Services – DELEG/UIA	DTMB-Agency Services Contract Administrator

1.202 PROJECT MANAGER

The Project Managers will oversee the project:

Name	Agency/Division	Title
John Walker	DTMB Agency Services – DELEG/UIA	Acting CSD
Mark Benward	DTMB Agency Services – DHS	Development Manager

1.300 Compensation and Payment

1.301 COMPENSATION AND PAYMENT

Method of Payment - The Contract will be paid on a **Firm, Fixed-Price**. The Pricing is included in **Attachment A.**

Travel - The State will not pay for any travel expenses, including hotel, mileage, meals, parking, etc. Travel time will not be reimbursed.

Out-of-Pocket Expenses - Contractor out-of-pocket expenses are not separately reimbursable by the State unless, on a case-by-case basis for unusual expenses, the State has agreed in advance and in writing to reimburse Contractor for such an expense at the **State's current travel reimbursement rates.**

Invoicing - Contractor will submit properly itemized invoices to "Bill To" Address on Purchase Order. **Incorrect or incomplete invoices will be returned to Contractor.** Invoices must provide and itemize, as applicable:

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

1.302 TAX EXCLUDED FROM PRICE

Sales Tax: The State is exempt from sales tax for direct purchases. The Contractor's prices 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.

1.400 IT Specific Requirements

1.401 CONTRACT MANAGEMENT

The Contractor's processes for change management and issue management, including escalation procedures are as follows:

As part of the Contractor's *Ports and Protocols Registration Application* management process, a change management form should be filled out whenever a change is made to the production system. The change management form should be printed out and stored in a central repository. The sections

entitled *Proposed Change*, *Requested By*, *Type of Change*, *Date Requested, & Priority* are to be completed by the requestor in order to make the request. Valid entries for the Type of Change field include Bug Fix, New Feature, Feature Improvement, and Other (describe briefly). The sections entitled *PnP Complications* & *Approximate LOE* are to be completed by the PnP Registration Application development team's technical lead before the changes are made. The sections entitled *CAP Complications* & *Approximate LOE* are to be completed by the CAP Registration Application development team's technical lead before the changes are made. The PnP technical lead, CAP technical lead, and client should all initial the form before development is begun. The sections entitled *Java Files Affected, SQL Files Affected, Privileges Affected, Roles Affected, & Values Affected* should be completed by the PnP development team member(s). The developer(s) should also initial to indicate that development is complete. The PnP Technical Lead and the client should perform testing, and each should initial that successful testing was completed. Once testing is complete, the code changes can be moved to production and the sections entitled Date Implemented & Version Implemented should be completed.

Proposed Change:	What would you like to see changed?
Requested By:	Your name, phone number, organization
Type of Change:	Functional, Database Change, and etc.
Date Requested:	
Priority:	
Rationale:	Specifically, how would the modification improve the system or allow you to manage your Ports, Protocols, or Services?
Your vision	What is your vision, how would this work, look, or feel?
PnP Complications:	
CAP Complications:	
Approximate LOE:	
PnP Lead Initial:	
CAP Lead Initial:	
Client's Initial:	
Java Files Affected:	
SQL Files Affected:	
Privileges Affected:	
Roles Affected:	
Data Labels:	
Values Affected:	
Additional Comments:	
Java Developer(s)' Initial:	
SQL Developer(s)' Initials	
PnP Tester's Initial:	
PM/Representative's Initial after testing:	
Date Implemented:	
Version Implemented:	

The Contractor's Software Support Department is there to assist you with any problems or questions that may arise. This support is provided via the Contractor's Customer Care Center, a team of highly qualified technical personnel trained to respond to problems relating to Voice Response software.

When necessary and with proper authority, we will access your system. This allows us to check programs, re-create problems, or make needed changes. This access is typically achieved via modem or VPN connection. If via modem, we require a separate line dedicated to the modem to facilitate connectivity.

There will also be times when we will instruct you to key in commands, read current screen messages, etc. In many cases, procedures or commands may be entered only from the console. For this reason, there must be a telephone accessible next to the console monitor at which you will be working. The availability of a telephone prevents the frustration and time spent of relaying information or trying to find an available monitor.

Procedure to Request Support Services:
The following details the proper way to request support, as well as the procedure used by the Contractor's Customer Care Center support members to track the call and resolve.

The Contractor's Support Services is the primary point of contact for clients with technical issues. Following a strategic counseling and management support plan, the Contractor's Support Services provides for the orderly escalation of service problems to the next highest level of support including third party hardware, software, and maintenance resources as deemed necessary to resolve a problem.

The first priority is to maintain the integrity of an operational system at a user site by following a standard operational procedure of regularly backing up system data, application software data, and user data. The following outline will identify how to create that backup plan. Your plan will determine what data to back up, how often, what medium to use, and where to store data for safekeeping.

The backup plan is crucial to ensuring the reliability of data in the system as well as providing timely restoration of the system in the event of major problems or catastrophe. It must be put in writing and kept with your organization's policies and procedures documentation. The backup plan must designate one person as a backup coordinator who will be assigned the responsibility of maintaining hard-copy logs of the dates and times at which backups occur. Overall information to be made part of your backup plan must include:

- Name of backup coordinator and record keeper
- Method(s) used for data backups, with a checklist of procedures
- Frequency of data backups
- Location of on-site data storage
- Location of off-site data storage
- Types of data to be backed up

For all client systems, all data should be backed up on a regular basis. This approach:

- Offers the greatest amount of data security
- Allows for one-step restoration of total memory loss
- Can often be done during off-hours.

The backup plan should be designed to occur at least on a monthly frequency. Backup procedures must be scheduled more frequently to accommodate any of the following occurrences:

- Changes to the base system configuration parameters (i.e. IP address or hardware configuration).
- Changes to the application logic or host connectivity parameters.
- Installation of new software or files (i.e. Phrases, Third Party Software or Custom Utility Programs).

Initially, create two backups and store them in separate locations. One long-term backup, updated at least once a month, should be kept off-site. This ensures that one backup will be safe in the event of a building disaster. Another backup can be kept more readily accessible at the office and should be updated on a bi-weekly basis. Periodic testing of your backup process must be made to insure that it is saving the data properly.

As part of our proposed support services, the Contractor will assist in the restoration of the system provided backups were maintained. Clients will use the standard help desk support procedure to notify the Contractor of the failed system. The Contractor will coordinate with the appropriate resources to determine hardware or software issue.

For hardware issues, the Contractor will utilize the spare kit parts to fix the system. If parts needed are not in the spare kit, the Contractor will overnight the parts.

Problem resolution – Escalation Process

The following strategic counseling and management support plan defines the Contractor's approach in the implementation of orderly escalation of service problem resolution stages. The Contractor's Support Services performs the following Level 1 through Level 3 problem resolution stages.

Level 1: Basic Technical Support includes gathering data, investigating and isolating the issue, and testing configuration changes that may have an effect on the issue. Investigation includes a search of appropriate documentation, such as user manuals, technical bulletins/notes, customer service bulletins, problem report lists, etc. These activities should result in a complete description of the symptoms, configuration information, revision level information, and detail on reproducibility. The gathering of network traces and/or memory uploads is also often appropriate.

Level 2: Advanced Technical Support, involves correlating the issue with other issues, reproducing the problem, identifying errors in product specification, identifying misinterpretations of product specifications, and localizing product defects. The activities at this level also include efforts toward finding an acceptable workaround.

Level 3: Product Support, involves activities such as the interpretation of gathered data, the examination of source code or hardware schematics. Completion may involve the recommendation of a workaround or the delivery of a fix. Fixes and their ramifications are always to be documented.

The Contractor's Support Services escalation procedure is a category-based system. By classifying all incoming calls, the Contractor ensures that the Customer's support issues will be resolved in a timely and efficient manner. This procedure identifies five unique call categories:

Category 1: The customer's entire system(s) is down. The Contractor's immediate priority is to restore service and not to debug the problem.

Category 2: A segment of the customer's system functionality is down or performance is seriously degraded. The Contractor's immediate priority is to restore/improve service, not debug the problem.

Category 3: Lower priority affecting issues or intermittent service affecting callers. The Contractor's priority is to begin collecting data to debug the problem.

Category 4: Configuration assistance, usability issues, network issues in an evaluation or lab. This is not for feature requests. Feature requests must go through the sales team and not through the Contractor's Support Services.

Category 5: Customer questions concerning product function or use and information requests. Non-contract customers.

The Contractor's escalation procedure insures that the hand off of a problem from the Contractor's Support Services is effectively received by a 3rd level Product Support group, with a clearly defined problem. The Contractor's Support Services must use judgment as to when a problem is best supported by level 3 as defined above. If the following timelines are reached without progress, this transfer must take place immediately.

Timeline 1. After attempting to troubleshoot the problem, if the Contractor's Engineer could not provide satisfactory solution and needs technical assistance, the Engineer will escalate the ticket to Level 2 Support. Engineer will also inform through E-mail to the client that the call has been escalated. The Contractor will also complete a Detailed Problem Report with all information and should attach it to the call ticket.

Timeline 2. After attempting to troubleshoot the problem, if the Engineer could not provide satisfactory solution and needs technical assistance, the Engineer will escalate the call to The Recovery Team. Engineer must provide a complete Detailed Problem Report with all information and should attach it to the call ticket.

Timeline 3. Once the call is ready to be closed, the Contractor will bring on a Support Services Engineer (remotely) to assist with contacting the customer to close the call. This coordination is to facilitate increased learning and full circle communication from the Contractor's Support Services. If the customer is unavailable to confirm closure, then the Engineer must make sure the Contractor's Support Services clearly understands the resolution of the ticket, the details are clearly written in the ticket, and the Contractor's Support Services will take ownership of closing the call with the customer.

If the Contractor's Support Services determines the cause of the problem is the result of Third Party Software. The Contractor will notify the client and transfer the case back to Support Services. It will be the client's responsibility to contact the vendor and setup a meeting for the Support Services to share its findings. The Contractor's Support Services can optionally provide services to the third party vendor at an additional cost.

The Contractor will provide a response within 45 minutes to 1 hour from the time a client call is received. Our guaranteed response time is 2 hours, with average resolution time often less than 1 hour. Continuing contact procedures within our Customer Care Center provides the client with on-going communication related to the status of their call.

1.402 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.

1.403 ENVIRONMENT

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

All services and products provided under this Contract must comply with all applicable State IT policies and standards. The Contractor must request any exception to State IT policies and standards in accordance with DTMB processes. The State may deny the exception request or seek a policy or standards exception.

The Contractor is required to review all applicable links provided below and state compliance in their response.

Enterprise IT Policies, Standards and Procedures:
http://www.michigan.gov/dit/0,1607,7-139-34305---,00.html

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

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

Enterprise IT Security Policy and Procedures:
http://www.michigan.gov/dit/0,1607,7-139-34305-108216--,00.html

The State's security environment includes:

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

Single Login security environment must be used for all new client-server software development. In instances where software is being converted from an existing package, or a client-server application is being purchased, the security mechanism must be approved in writing by the State's Project Manager and DTMB's Office of Enterprise Security.

IT Strategic Plan:
http://www.michigan.gov/dit/0,1607,7-139-30637-135173--,00.html

IT eMichigan Web Development Standard Tools:
http://www.michigan.gov/documents/som/Look_and_Feel_Standards_302051_7.pdf

SUITE:
www.michigan.gov/suite
The SUITE website includes standards for project management, systems engineering, and associated forms and templates which must be followed.

Agency-Specific Technical Environment:

For DELEG/UIA:
The majority of the core of the existing UIA system resides on an IBM mainframe environment. The Internet applications are server-based applications accessing an Oracle database. These web applications are written in .NET using either Visual Basic or C#. Data from the Oracle database is updated to the OS390 mainframe (IMS) database using either Websphere MQ messaging or FTP file transfers. There is also a weekly sweep for Oracle reload to keep the databases (IMS and Oracle) in sync. UIA also uses two separate IVR systems, one connected to the mainframe and one to Oracle to gather data, passing some of the calls to a PBX and ACD system relying on intelligent routing. While the majority of the data processing transactions occur in the mainframe environment, the data entry points, where UIA interacts with their internal and external customers, have relied on newer technology.

For DHS:
The CDC IVR applications are server based applications accessing an Oracle database. The CDC IVR system uses two (2) UCS1000 Platform Raid Bundles, which includes for each: (8) E1/T1 Boards; (4) SSP Boards; (3) 18.1 GB Hard Disks; (1) Ultraplex 40 Max CD Rom Drive (SCSI); (1) Tandberg 4/8 GB Tape Drive (SCSI). The CDC IVR system also includes a Spanish Language Package and a Oracle database interface.

Article 2 - Terms and Conditions

2.000 Contract Structure and Term

2.001 CONTRACT TERM

This Contract is for a period of five (5) years beginning October 1, 2010 through September 30, 2015. 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 five (5) 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, including any Statements of Work and Exhibits, to the extent not contrary to the Contract, each of which is incorporated for all purposes, constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior agreements, whether written or oral, with respect to the subject matter and as additional terms and conditions on the purchase order must apply as limited by **Section 2.005.**

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

2.007 HEADINGS

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

2.008 FORM, FUNCTION & UTILITY

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

2.009 REFORMATION AND SEVERABILITY

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

2.010 Consents and Approvals

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

2.011 NO WAIVER OF DEFAULT

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

2.012 SURVIVAL

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

2.020 Contract Administration

2.021 ISSUING OFFICE

This Contract is issued by the Department of Technology, Management and Budget, Purchasing Operations and DHS, DeLEG/UIA (collectively, including all other relevant State of Michigan departments and agencies, the "State"). Purchasing Operations is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. The Purchasing Operations Contract Administrator for this Contract is:

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
517.373-3993

2.022 CONTRACT COMPLIANCE INSPECTOR

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

Patty Bogard,
Department of Technology, Management and Budget
Contract Administration Unit
530 W Allegan St
Lansing, Michigan 48933
BogardP@michigan.gov
Phone 517-335-4051
Fax 517-335-0046

2.023 PROJECT MANAGER

The following individual will oversee the project:

Mark Benward
DTMB-DHS Agency Services
Ph: 517-335-0834
BenwardM@michigan.gov

John Walker
DTMB-DELEG/UIA Agency Services
Ph:313-456-3814
WalkerJ5@michigan.gov

2.024 CHANGE REQUESTS

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

If the State requests or directs the Contractor to perform any Services/Deliverables that are outside the scope of the Contractor's responsibilities under the Contract ("New Work"), the Contractor must notify the State promptly before commencing performance of the requested activities it believes are New Work. If the Contractor fails to notify the State before commencing performance of the requested activities, any such activities performed before the Contractor gives notice shall be conclusively considered to be in-scope Services/Deliverables and not New Work.

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

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

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

(2) Contractor Recommendation for Change Requests:
Contractor shall be entitled to propose a Change to the State, on its own initiative, should Contractor believe the proposed Change would benefit the Contract.

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

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

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

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

2.025 NOTICES

Any notice given to a party under the Contract must be deemed effective, if addressed to the 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:
Name:
Address:

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 RFP and Contract or project to which it relates shall not be made without prior written State approval, and then only in accordance with the explicit written instructions from the State. No results of the activities associated with the RFP and Contract are to be released without prior written approval of the State and then only to persons designated.

2.032 CONTRACT DISTRIBUTION

Purchasing Operations retains the sole right of Contract distribution to all State agencies and local units of government unless other arrangements are authorized by Purchasing Operations.

2.033 PERMITS

Contractor must obtain and pay any associated costs for all required governmental permits, licenses and approvals for the delivery, installation and performance of the Services. The State 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

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

2.042 ADJUSTMENTS FOR REDUCTIONS IN SCOPE OF SERVICES/DELIVERABLES

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

2.043 SERVICES/DELIVERABLES COVERED

The State shall not be obligated to pay any amounts in addition to the charges specified in this Contract for all Services/Deliverables to be provided by Contractor and its Subcontractors, if any, under this Contract,.

2.044 INVOICING AND PAYMENT – IN GENERAL

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

(b) Each Contractor invoice shall show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements. Invoices for Services performed on a time and materials basis shall show, for each individual, the number of hours of Services performed during the billing period, the billable skill/labor category for such person and the applicable hourly billing rate. Prompt payment by the State is contingent on the Contractor's invoices showing the amount owed by the State minus any holdback amount to be retained by the State in accordance with **Section 1.600**.

(c) 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.

(d) All invoices should reflect actual work done. 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 Management & Budget. This activity shall occur only upon the specific written direction from Purchasing Operations.

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

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

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 local employment taxes, including the taxes.

2.052 SALES AND USE TAXES

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

2.060 Contract Management

2.061 CONTRACTOR PERSONNEL QUALIFICATIONS

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

2.062 CONTRACTOR KEY PERSONNEL – DELETED NA

2.063 RE-ASSIGNMENT OF PERSONNEL AT THE STATE'S REQUEST

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

2.064 CONTRACTOR PERSONNEL LOCATION

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

2.065 CONTRACTOR IDENTIFICATION

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

2.066 COOPERATION WITH THIRD PARTIES

Contractor agrees to cause its personnel and the personnel of any Subcontractors to cooperate with the State and its agents and other contractors including the State's Quality Assurance personnel. As reasonably requested by the State in writing, the Contractor shall provide to the State's agents and other contractors reasonable access to Contractor's Project personnel, systems and facilities to the extent the access relates to activities specifically associated with this Contract and 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

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

2.070 Subcontracting by Contractor

2.071 CONTRACTOR FULL RESPONSIBILITY

Contractor shall have full responsibility for the successful performance and completion of all of the Services and Deliverables. The State 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

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

2.073 SUBCONTRACTOR BOUND TO CONTRACT

In any subcontracts entered into by Contractor for the performance of the Services, Contractor shall require the Subcontractor, to the extent of the Services to be performed by the Subcontractor, to be bound to Contractor by the terms of this Contract and to assume toward Contractor all of the obligations and responsibilities that Contractor, by this Contract, assumes toward the State. The State reserves the right to receive copies of and review all subcontracts, although Contractor may delete or mask any proprietary information, including pricing, contained in such contracts before providing them to the State. The management of any Subcontractor shall be the responsibility of Contractor, and Contractor shall remain responsible for the performance of its Subcontractors to the same extent as if Contractor had not subcontracted such performance. Contractor shall make all payments to Subcontractors or suppliers of Contractor. Except as otherwise agreed in writing by the State and Contractor, the State 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 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 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 shall also be expected to comply with the State's security and acceptable use policies for State IT equipment and resources. See http://www.michigan.gov/dit. Furthermore, Contractor personnel 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. 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 breaches this Section, the Contractor must (i) promptly cure any deficiencies and (ii) comply with any applicable federal and state laws and regulations pertaining to unauthorized disclosures. Contractor and the State 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.

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

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

2.112 EXAMINATION OF RECORDS

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

2.113 RETENTION OF RECORDS

Contractor shall maintain at least until the end of the Audit Period all pertinent financial and accounting records (including time sheets and payroll records, and information pertaining to the Contract and to the Services, equipment, and commodities provided under the Contract) pertaining to the Contract according to generally accepted accounting principles and other procedures specified in this Section. Financial and accounting records 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 30 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 and in subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried for more than four invoices. If a balance remains after four invoices, then the remaining amount 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, the difference between the payment received and the correct payment amount is greater than 10%, then the Contractor shall pay all of the reasonable costs of the audit.

2.120 Warranties

2.121 WARRANTIES AND REPRESENTATIONS

The Contractor represents and warrants:

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

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

(c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by Contractor under this Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by Contractor to the State under neither this Contract, nor their use by the State shall infringe the patent, copyright, trade secret, or other proprietary rights of any third party.

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

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

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

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

(h) Neither Contractor nor any Affiliates, nor any employee of either has accepted or must accept anything of value based on an understanding that the actions of the Contractor or Affiliates or employee on behalf of the State would be influenced. Contractor must not attempt to influence any State employee by the direct or indirect offer of anything of value.

(i) Neither Contractor nor any Affiliates, nor any employee of either has paid or agreed to pay any person, other than bona fide employees and consultants working solely for Contractor or the Affiliate, any fee,

commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.

(j) The prices proposed by Contractor were arrived at independently, without consultation, communication, or agreement with any other bidder for the purpose of restricting competition; the prices quoted were not knowingly disclosed by Contractor to any other bidder; and no attempt was made by Contractor to induce any other person to submit or not submit a proposal for the purpose of restricting competition.

(k) All financial statements, reports, and other information furnished by Contractor to the State as part of its response to the RFP or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Contractor as of the respective dates, or for the respective periods, covered by the financial statements, reports, other information. Since the respective dates or periods covered by the financial statements, reports, or other information, there have been no material adverse changes in the business, properties, financial condition, or results of operations of Contractor.

(l) All written information furnished to the State by or for the Contractor in connection with this Contract, including its bid, is true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make the information not misleading.

(m) It is not in material default or breach of any other contract or agreement that it may have with the State or any of its departments, commissions, boards, or agencies. Contractor further represents and warrants that it has not been a party to any contract with the State or any of its departments that was terminated by the State or the department within the previous five years for the reason that Contractor failed to perform or otherwise breached an obligation of the contract.

(n) If any of the certifications, representations, or disclosures made in the Contractor's original bid response change after contract award, the Contractor is required to report those changes immediately to the Department of Technology, Management and Budget, Purchasing Operations.

2.122 WARRANTY OF MERCHANTABILITY – DELETED NA

2.123 WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE – DELETED NA

2.124 WARRANTY OF TITLE – DELETED NA

2.125 EQUIPMENT WARRANTY – DELETED NA

2.126 EQUIPMENT TO BE NEW – DELETED NA

2.127 PROHIBITED PRODUCTS – DELETED NA

2.128 CONSEQUENCES FOR BREACH – DELETED NA

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.

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 MDTMB 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

2.141 GENERAL INDEMNIFICATION

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

2.142 CODE INDEMNIFICATION

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

2.143 EMPLOYEE INDEMNIFICATION

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

2.144 PATENT/COPYRIGHT INFRINGEMENT INDEMNIFICATION

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

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

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

2.145 CONTINUATION OF INDEMNIFICATION OBLIGATIONS

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

2.146 INDEMNIFICATION PROCEDURES

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

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

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

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

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

2.150 Termination/Cancellation

2.151 NOTICE AND RIGHT TO CURE

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

(c) If the State chooses to partially terminate this Contract for cause, charges payable under this Contract 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

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

implementation of the Services no longer practical or feasible, (c) unacceptable prices for Additional Services or New Work requested by the State, or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any RFP issued by the State. The State may terminate this Contract for its convenience, in whole or in part, by giving Contractor written notice at least 30 days before the date of termination. If the State chooses to terminate this Contract in part, the charges payable under this Contract must be equitably adjusted to reflect those Services/Deliverables that are terminated. Services and related provisions of this Contract that are terminated for 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 the State terminates this Contract before its expiration for its own convenience, the State must pay Contractor for all charges due for Services provided before the date of termination and, if applicable, as a separate item of payment under this Contract, for Work In Process, on a percentage of completion basis at the level of completion determined by the State. All completed or partially completed Deliverables prepared by Contractor under this Contract, at the option of the State, becomes the State's property, and Contractor is entitled to receive equitable fair compensation for the Deliverables. Regardless of the basis for the termination, the State is not obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.

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

2.158 RESERVATION OF RIGHTS

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

2.160 Termination by Contractor

2.161 TERMINATION BY CONTRACTOR

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

2.171 CONTRACTOR TRANSITION RESPONSIBILITIES

If the State terminates this contract, for convenience or cause, or if the Contract is otherwise dissolved, voided, rescinded, nullified, expires or rendered unenforceable, the Contractor shall comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. If this Contract expires or terminates, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed forty-five (45) days. These efforts must include, but are not limited to, those listed in **Section 2.150.**

2.172 CONTRACTOR PERSONNEL TRANSITION

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

2.173 CONTRACTOR INFORMATION TRANSITION

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

2.174 CONTRACTOR SOFTWARE TRANSITION

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

2.175 TRANSITION PAYMENTS

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

2.176 STATE TRANSITION RESPONSIBILITIES

In the event that this Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the State agrees to reconcile all accounts between the State and the Contractor, complete any pending post-project reviews and perform any others obligations upon which the State and the Contractor agree.

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

2.180 Stop Work

2.181 STOP WORK ORDERS

The State may, at any time, by written Stop Work Order to Contractor, require that Contractor stop all, or any part, of the work called for by the Contract for a period of up to 90 calendar days after the Stop Work Order is delivered to Contractor, and for any further period to which the parties may agree. The Stop Work Order must be identified as a Stop Work Order and must indicate that it is issued under this **Section**. 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; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

The Contractor's liability for damages to the State is limited to two times the value of the Contract or $500,000 which ever is higher. The foregoing limitation of liability does not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

The 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 MDTMB Purchasing Operations.

(2) Contractor shall also notify MDTMB 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 MDTMB 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.

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

2.240 Performance

2.241 TIME OF PERFORMANCE

(a) Contractor 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)

(a) SLAs will be completed with the following operational considerations:

(1) SLAs will not be calculated for individual Incidents where any event of Excusable Failure has been determined; Incident means any interruption in Services.

(2) SLAs will not be calculated for individual Incidents where loss of service is planned and where the State has received prior notification or coordination.

(3) SLAs will not apply if the applicable Incident could have been prevented through planning proposed by Contractor and not implemented at the request of the State. To invoke this consideration, complete documentation relevant to the denied planning proposal must be presented to substantiate the proposal.

(4) Time period measurements will be based on the time Incidents are received by the Contractor and the time that the State receives notification of resolution based on 24x7x365 time period, except that the time period measurement will be suspended based on the following:

(i) Time period(s) will not apply where Contractor does not have access to a physical State Location and where access to the State Location is necessary for problem identification and resolution.

(ii) Time period(s) will not apply where Contractor needs to obtain timely and accurate information or appropriate feedback and is unable to obtain timely and accurate information or appropriate feedback from the State.

(b) Chronic Failure for any Service(s) will be defined as three unscheduled outage(s) or interruption(s) on any individual Service for the same reason or cause or if the same reason or cause was reasonably discoverable in the first instance over a rolling 30 day period. Chronic Failure will result in the State's option to terminate the effected individual Service(s) and procure them from a different vendor for the chronic location(s) with Contractor to pay the difference in charges for up to three additional months. The termination of the Service will not affect any tiered pricing levels.

(c) Root Cause Analysis will be performed on any Business Critical outage(s) or outage(s) on Services when requested by the Contract Administrator. Contractor will provide its analysis within two weeks of outage(s) and provide a recommendation for resolution.

(d) All decimals must be rounded to two decimal places with five and greater rounding up and four and less rounding down unless otherwise specified.

2.243 LIQUIDATED DAMAGES

The parties acknowledge that late or improper completion of the Work will cause loss and damage to the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result. Therefore, Contractor and the State agree that if there is late or improper completion of the Work and the State does not elect to exercise its rights under **Section 2.152**, the State is entitled to collect liquidated damages in the amount of $5,000.00 and an additional $100.00 per day for each day Contractor fails to remedy the late or improper completion of the Work.

Unauthorized Removal of any Key Personnel

It is acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of the Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to

exercise its rights under **Section 2.152**, the State may assess liquidated damages against Contractor as specified below.

For the Unauthorized Removal of any Key Personnel designated in the applicable Statement of Work, the liquidated damages amount is $25,000.00 per individual if the Contractor identifies a replacement approved by the State under **Section 2.060** and assigns the replacement to the Project to shadow the Key Personnel who is leaving for a period of at least 30 days before the Key Personnel's removal.

If Contractor fails to assign a replacement to shadow the removed Key Personnel for at least 30 days, in addition to the $25,000.00 liquidated damages for an Unauthorized Removal, Contractor must pay the amount of $833.33 per day for each day of the 30 day shadow period that the replacement Key Personnel does not shadow the removed Key Personnel, up to $25,000.00 maximum per individual. The total liquidated damages that may be assessed per Unauthorized Removal and failure to provide 30 days of shadowing must not exceed $50,000.00 per individual.

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 NA

2.260 Ownership – Deleted NA

2.270 State Standards

2.271 EXISTING TECHNOLOGY STANDARDS

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

2.272 ACCEPTABLE USE POLICY

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

2.273 SYSTEMS CHANGES

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

2.280 Extended Purchasing – Deleted NA

2.290 Environmental Provision – Deleted NA

2.300 Deliverables – Deleted NA

2.310 Software Warranties – Deleted NA

2.320 Software Licensing – Deleted NA

2.330 Source Code Escrow – Deleted NA

Glossary

Days	Means calendar days unless otherwise specified.
24x7x365	Means 24 hours a day, seven days a week, and 365 days a year (including the 366th day in a leap year).
Additional Service	Means any Services/Deliverables within the scope of the Contract, but not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration.
Audit Period	See Section 2.110
Business Day	Whether capitalized or not, shall mean any day other than a Saturday, Sunday or State-recognized legal holiday (as identified in the Collective Bargaining Agreement for State employees) from 8:00am EST through 5:00pm EST unless otherwise stated.
Blanket Purchase Order	An alternate term for Contract as used in the States computer system.
Business Critical	Any function identified in any Statement of Work as Business Critical.
Chronic Failure	Defined in any applicable Service Level Agreements.
Deliverable	Physical goods and/or commodities as required or identified by a Statement of Work
DTMB	Michigan Department of Technology, Management and Budget
Environmentally preferable products	A product or service that has a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. Such products or services may include, but are not limited to, those that contain recycled content, minimize waste, conserve energy or water, and reduce the amount of toxics either disposed of or consumed.
Excusable Failure	See Section 2.244.
Hazardous material	Any material defined as hazardous under the latest version of federal Emergency Planning and Community Right-to-Know Act of 1986 (including revisions adopted during the term of the Contract).
Incident	Any interruption in Services.
ITB	A generic term used to describe an Invitation to Bid. The ITB serves as the document for transmitting the RFP to potential bidders
Key Personnel	Any Personnel designated in Article 1 as Key Personnel.
New Work	Any Services/Deliverables outside the scope of the Contract and not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration.
Ozone-depleting substance	Any substance the Environmental Protection Agency designates in 40 CFR part 82 as: (1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or (2) Class II, including, but not limited to, hydro chlorofluorocarbons
Post-Consumer Waste	Any product generated by a business or consumer which has served its intended end use, and which has been separated or diverted from solid waste for the purpose of recycling into a usable commodity or product, and which does not include post-industrial waste.
Post-Industrial Waste	Industrial by-products that would otherwise go to disposal and wastes generated after completion of a manufacturing process, but do not include internally generated scrap commonly returned to industrial or manufacturing processes.
Recycling	The series of activities by which materials that are no longer useful to the generator are collected, sorted, processed, and converted into raw materials and used in the production of new products. This definition excludes the use of these materials as a fuel substitute or for energy production.
Deleted – Not Applicable	Section is not applicable or included in this RFP. This is used as a placeholder to maintain consistent numbering.
Reuse	Using a product or component of municipal solid waste in its original form more than once.
RFP	Request for Proposal designed to solicit proposals for services

Services	Any function performed for the benefit of the State.
Source reduction	Any practice that reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment prior to recycling, energy recovery, treatment, or disposal.
State Location	Any physical location where the State performs work. State Location may include state-owned, leased, or rented space.
Subcontractor	A company Contractor delegates performance of a portion of the Services to, but does not include independent contractors engaged by Contractor solely in a staff augmentation role.
Unauthorized Removal	Contractor's removal of Key Personnel without the prior written consent of the State.
Waste prevention	Source reduction and reuse, but not recycling.
Waste reduction and Pollution prevention	The practice of minimizing the generation of waste at the source and, when wastes cannot be prevented, utilizing environmentally sound on-site or off-site reuse and recycling. The term includes equipment or technology modifications, process or procedure modifications, product reformulation or redesign, and raw material substitutions. Waste treatment, control, management, and disposal are not considered pollution prevention, per the definitions under Part 143, Waste Minimization, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended.
Work in Progress	A Deliverable that has been partially prepared, but has not been presented to the State for Approval.
Work Product	Refers to any data compilations, reports, and other media, materials, or other objects or works of authorship created or produced by the Contractor as a result of an in furtherance of performing the services required by this Contract.

ATTACHMENT A

CONTRACT PRICING

TABLE 1:
DELEG/UIA - Covered Software Maintenance and Support Cost Table

Software System	Cost Categories	Cost ($)	Comments
Marvin System	**Software, Maintenance and Support cost**		Includes Centurion Guard remote monitoring
	First Year	$22,530.00	
	Second Year	$22,530.00	
	Third Year	$23,655.00	
	Fourth Year	$23,655.00	
	Fifth Year	$23,655.00	
	Total Costs	**$116,025.00**	

TABLE 2:
DELEG/UIA - Covered Software Maintenance and Support Cost Table

Software System	Cost Categories	Cost ($)	Comments
Initial Claims System	**Software, Maintenance and Support cost**		Includes Centurion Guard remote monitoring
	First Year	$153,195.00	
	Second Year	$153,195.00	
	Third Year	$160,855.00	
	Fourth Year	$160,855.00	
	Fifth Year	$160,855.00	
	Total Costs	**$788,955.00**	

TABLE 3:
DELEG/UIA - Covered Software Maintenance and Support Cost Table

Software System	Cost Categories	Cost ($)	Comments
Other	**Software, Maintenance and Support cost**		Includes support for Nuance Text to Speech software and MARVIN/Web services applications
	First Year	$17,400.00	
	Second Year	$17,400.00	
	Third Year	$17,400.00	
	Fourth Year	$17,400.00	
	Fifth Year	$17,400.00	
	Total Costs	**$87,000**	

TABLE 4:

DHS - Covered Software Maintenance and Support Cost Table

Software System	Cost Categories	Cost ($)	Comments
CDC System	**Software, Maintenance and Support cost**		Includes Centurion Guard remote monitoring
	First Year	$11,162.00	
	Second Year	$11,162.00	
	Third Year	$11,162.00	
	Fourth Year	$11,162.00	
	Fifth Year	$11,162.00	
	Total Costs	**$55,810.00**	

TABLE 5:

DHS - Covered Software Maintenance and Support Cost Table

Software System	Cost Categories	Cost ($)	Comments
Automated Billing for Providers & Clients	**Software, Maintenance and Support cost**		Includes Centurion Guard remote monitoring
	First Year	$14,138.00	
	Second Year	$14,138.00	
	Third Year	$14,138.00	
	Fourth Year	$14,138.00	
	Fifth Year	$14,138.00	
	Total Costs	**$70,690.00**	

TABLE 6:

DHS - Covered Software Maintenance and Support Cost Table

Software System	Cost Categories	Cost ($)	Comments
Inquiry Application	**Software, Maintenance and Support cost**		Includes Centurion Guard remote monitoring
	First Year	$14,252.00	
	Second Year	$14,252.00	
	Third Year	$14,252.00	
	Fourth Year	$14,252.00	
	Fifth Year	$14,252.00	
	Total Costs	**$71,260.00**	

TABLE 7: (This dollar amount will not be included in Contract total. If needed it will be added through the Contract Change Notice process.)

DHS - Covered Software Maintenance and Support Cost Table

Software System	Cost Categories	Cost ($)	Comments
Adoption Subsidy Application	**Software, Maintenance and Support cost**		This application has been turned off at the request of DHS. These maintenance costs would only apply if/when this application is turned back on. Includes Centurion Guard remote monitoring
	First Year	$4,410.00	
	Second Year	$4,410.00	
	Third Year	$4,410.00	
	Fourth Year	$4,410.00	
	Fifth Year	$4,410.00	
	Total Costs	**$22,050.00**	

TABLE 8:

Annual Hardware Maintenance on Child Day Care Server 1

	Cost Categories	Cost ($)	Comments
	Hardware maintenance cost		24x7 coverage Coverage period currently Oct 1 thru Sept 30.
	First Year	$24,988.00	
	Second Year	$24,988.00	
	Third Year	$24,988.00	
	Fourth Year	$26,237.00	
	Fifth Year	$26,237.00	
	Total Costs	**$127,438.00**	

TABLE 9:

Annual Hardware Maintenance on Child Day Care Server 2

	Cost Categories	Cost ($)	Comments
	Software, Maintenance and Support cost		8x5 coverage Coverage period Currently Nov 1 thru Oct 31
	First Year	$15,176.00	
	Second Year	$15,176.00	
	Third Year	$15,176.00	
	Fourth Year	$15,934.00	
	Fifth Year	$15,934.00	
	Total Costs	**$77,396.00**	

TABLE 10:

Labor Rate Card - Hourly:

	Staffing Category	Firm Fixed Hourly Rate
	Project Manager / Technical Lead	$110.00
	Training Specialist	$50.00
	Senior Software Developer	$85.00
	Programmer Analyst	$85.00
	Technical Writer	$75.00
	IVR DBA	$85.00
	IVR Network Engineer Sr	$85.00
	IVR Programmer/Analyst Sr	$85.00
	IVR Senior Programmer/Analyst	$85.00
	IVR Web Developer Sr	$75.00
	List Any Other(s)	
	Project Manager Sr	$110.00

Notes:

1) Hourly rates quoted are firm, fixed rates for the duration of the contract. Travel and other expenses will not be reimbursed. "Estimated Hours" and "Extended Price" are non-binding and will be used at the State's discretion to determine best value to the State. The State will utilize the fully loaded hourly rates detailed above for each staff that will be used as fixed rates for responses to separate statements of work.

2) Actual funding for enhancements will occur on a yearly basis, and there is no guarantee as to the level of funding, if any, available to the project.

3) The parties agree that the Services/Deliverables to be rendered by Contractor using the future enhancements/rate card on this Contract will be defined and described in detail in separate Statements of Work. Contractor shall not be obliged or authorized to commence any work to implement a Statement of Work until authorized via a purchase order issued against this Contract.

4) Unless otherwise agreed by the parties, each Statement of Work will include:

a. Background
b. Project Objective
c. Scope of Work
d. Deliverables
e. Acceptance Criteria
f. Project Control and Reports
g. Specific Department Standards
h. Payment Schedule
i. Travel and Expenses
j. Project Contacts
k. Agency Responsibilities and Assumptions
l. Location of Where the Work is to be Performed
m. Expected Contractor Work Hours and Conditions