

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

March 5, 2012

**CHANGE NOTICE No.2**  
**TO**  
**CONTRACT NO. 071B1300072**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF CONTRACTOR  <b>Agate Software</b> <b>2214 University Park Drive, Suite 102</b> <b>Okemos, MI 48865</b>  Email: <a href="mailto:mepolito@agatesoftware.com">mepolito@agatesoftware.com</a>	TELEPHONE Mark Epolito <b>(517) 336-2511</b>
	CONTRACTOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-1640 <b>Mark Lawrence</b>
Contract Compliance Inspector: Vic Mankowski <b>Intelligrants Software Maintenance and Support</b>	
CONTRACT PERIOD: <b>5 yrs. + 5 one-year options</b> From: <b>October 1, 2010</b> To: <b>September 30, 2015</b>	
TERMS <p style="text-align: center;"><b>N/A</b></p>	SHIPMENT <p style="text-align: center;"><b>N/A</b></p>
F.O.B. <p style="text-align: center;"><b>N/A</b></p>	SHIPPED FROM <p style="text-align: center;"><b>N/A</b></p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;"><b>N/A</b></p>	
MISCELLANEOUS INFORMATION: .	

**THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT**

**NATURE OF CHANGE(S):**

Effective immediately, this contract is hereby **INCREASED** by \$1,796,000.00. Please also note that the Contract Compliance Inspector/Enterprise Program Manager has been **CHANGED** to VicMankowski. All other terms, conditions, pricing and specifications remains the same.

**AUTHORITY/REASON(S):**

Per vendor and agency agreement, the approval of DTMB Procurement.

**INCREASE: \$1,796,000.00**

**TOTAL REVISED ESTIMATED CONTRACT VALUE: \$8,001,022.50**

**Cost Table 8: Annual Software Maintenance and Support and Hosting for Michigan State Housing  
Development Authority (MSHDA)**

AGENCY	(4/1/2012 – 4=3/31/2013) Year 1	(4/1/2013 – 3/31/2014) Year 2	(4/1/2014 – 3/31/2015) Year 3	Total, Years 1- 3
MSHDA				
Ongoing maintenance and support	\$525,000.00	\$510,000.00	\$525,000.00	\$1,670,000.00
Hosting	\$42,000.00	\$42,000.00	\$42,000.00	\$126,000
Grand Total, MSHDA maintenance and support and hosting				\$1,796,000.00

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

November 29, 2011

**CHANGE NOTICE No.1**  
**TO**  
**CONTRACT NO. 071B1300072**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF CONTRACTOR  <b>Agate Software</b> <b>2214 University Park Drive, Suite 102</b> <b>Okemos, MI 48865</b>  Email: <a href="mailto:mepolito@agatesoftware.com">mepolito@agatesoftware.com</a>	TELEPHONE Mark Epolito <b>(517) 336-2511</b>
	CONTRACTOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-1640 <b>Mark Lawrence</b>
Contract Compliance Inspector: Sara Williams <b>Intelligrants Software Maintenance and Support</b>	
CONTRACT PERIOD: <b>5 yrs. + 5 one-year options</b> From: <b>October 1, 2010</b> To: <b>September 30, 2015</b>	
TERMS <p style="text-align: center;"><b>N/A</b></p>	SHIPMENT <p style="text-align: center;"><b>N/A</b></p>
F.O.B. <p style="text-align: center;"><b>N/A</b></p>	SHIPPED FROM <p style="text-align: center;"><b>N/A</b></p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;"><b>N/A</b></p>	
MISCELLANEOUS INFORMATION: .	

**THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT**

**NATURE OF CHANGE(S):**

**Effective immediately, this contract is hereby INCREASED by \$271,522.50 for products and services for the Michigan Domestic Violence Prevention Treatment Board, per attached proposal dated November 28, 2011. Please also note that the buyer has been CHANGED to Mark Lawrence. All other terms, conditions, pricing and specifications remains the same.**

**AUTHORITY/REASON(S):**

**Per vendor and agency agreement, the approval of DTMB Procurement and the approval of the State Administrative Board on November 1, 2011.**

**INCREASE: \$271,522.50**

**TOTAL REVISED ESTIMATED CONTRACT VALUE: \$6,205,022.50**

November 30, 2011  
Jim Hogan  
Information Officer, MDTMB  
Lewis Cass Building  
320 S. Walnut Street  
Lansing, MI 48909

**RE: Michigan Domestic Violence Prevention and Treatment Board Statement of Work**

Dear Jim:

Agate Software, Inc. is providing this statement of work to the State of Michigan, Department of Technology Management and Budget ('DTMB' or the 'State'), for the services associated with the implementation of IntelliGrants for the Michigan Domestic Violence Prevention and Treatment Board. This Statement of Work has been created in accordance with the terms and conditions of contract 071B1300072.

Additional information can be found in the included attachments.

Best Regards,

Mark Epolito  
IntelliGrants Solutions



## Project Information

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### Background

The Michigan Domestic Violence Prevention and Treatment Board (MDVPTB) was established within the Michigan Family Independence Agency (now known as the Department of Human Services) in 1978 by state legislation that created a Governor-appointed Board responsible for focusing state activity on domestic violence. The Board administers state and federal funding for domestic violence shelters and advocacy services, develops and recommends policy, and develops and provides technical assistance and training.

MDVPTB administers multiple programs focused on distributing state and federal funding to organizations throughout the state of Michigan. MDVPTB is required to capture and report detailed information associated with the programs that they administer. This reporting includes monthly and quarterly reporting from sub-recipients along with consolidated reporting from MDVPTB to state and federal funding sources.

### Project Objective

The objective of this project is to implement and configure IntelliGrants to be used by MDVPTB for the administration of the following programs:

1. Service Training Officer Prosecutors (STOP)
2. Domestic Violence (DV)
3. Transitional Supportive Housing (TSH)
4. Rural Domestic Violence Child Victimization (Rural)
5. Sexual Assault Comprehensive Services (SACS)
6. Sexual Assault Nurse Examiners (SANE)



## Scope of Work

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### General Provisions

- All professional services required for execution have been included in deliverable costs
- Professional services required to perform work outside of in-scope requirements in the Requirements Document can be purchased as-needed
- Data conversion and system integration are considered out of scope
- Work associated with out of scope requirements will be handled through change management procedures outlined in Attachment 3
- The system will not be configured to accept applications or facilitate the review or processing of applications post-submission
- Agate Software, Inc. services to the development of each Management Report will not exceed ten (10) hours.
- Ted Lee, DTMB PM to serve as the State point of contact for final acceptance
- Deliverables to be signed-off on by Ted Lee and Julie Giddings

The scope of work for this engagement includes all software and services necessary to provide all deliverables and elements of programs 1-6 listed above.

### Stage 1: Requirements

#### Tasks

- Creation of Requirements Document
  - Includes descriptions of all tasks to be completed during this engagement

#### Vendor Roles and Responsibilities

- Create requirements document that aligns with the requirements provided by MDVPTB

#### State Roles and Responsibilities

- Provide specific system requirements and associated materials
- Availability to meet with vendor to finalize requirements
- Sign off on Requirements document

#### Acceptance Process

- The requirements document will go through two iterations of review and updates. After the second round of updates MDVPTB will sign off on the document.

### Stage 2: Configuration and Development

#### Tasks

- Configuration of Contract\*
  - One (1) unique workflow
    - Work flow contains up to four (4) statuses
    - Two (2) iterative reviews during design and build
    - Workflow to be used for all programs



- Six (6) form pages
  - Client responsible for initial design and layout (template)
  - Each form design includes up to twenty (20) data fields
  - Each form design includes up to ten (10) business rules
  - Two (2) iterative reviews included during design and build
  - One (1) form to be used for each program
- Expenditure Reports
  - One (1) unique workflow
    - Work flow contains up to 10 statuses with 5 system notifications
    - Two (2) iterative reviews during design and build
    - One (1) workflow to be used for all program expenditure reports
  - Twelve (12) form pages
    - Client responsible for initial design and layout (template)
    - Creation of twelve (12) form designs based on requirements
      - Each form design includes up to twenty (20) data fields
      - Each form design includes up to ten (10) business rules
    - Two (2) form pages to be used for each program
    - Two (2) iterative reviews during design
    - Two (2) iterative reviews during build
  - Printable version for payment processing
- Activity-Narrative Reports
  - One (1) unique workflow
    - Configuration of one (1) workflow using document designer
    - Work flow contains up to ten (10) statuses with five (5) system notifications
    - Two (2) iterative reviews during design and build
    - Workflow to be used for all program activity narrative reports
  - Twelve (12) form pages
    - Client responsible for initial design and layout (template)
    - Creation of form designs based on requirements
    - Each form design includes up to twenty (20) data fields
    - Each form design includes up to ten (10) business rules
    - Two (2) iterative reviews during design
    - Two (2) form pages to be used for each program
- Management Reports
  - Includes up to three (3) reports
    - Client responsible for initial design and layout (template)
    - Development and build of IG 09 formatted reports
    - Two (2) iterative reviews during build
- System Setup
  - Installation
    - IG 09 product installation and maintenance of a hosted demo instance of product for the implementation phase
  - Product branding



- IG 09 product domain branding graphics and CSS updates
- Security Roles
  - Up to ten (10) Security roles

#### Vendor Roles and Responsibilities

- Configuration according to design document
- Test configuration
- Migrate data from development environment to the demonstration environment for MDVPTB testing

#### State Roles and Responsibilities

- Test and accept configuration
- Be available for weekly meetings to discuss ongoing design, configuration and development

#### Acceptance Process

- MDVPTB to follow Acceptance Process as described in Attachment 5.

### **Stage 3: Documentation**

#### Tasks

- Documentation Creation
  - One (1) administrator (MDVPTB) manual
    - Up to 75 pages including screen shots
    - One (1) electronic copy
  - One (1) grantee (end-user) manual
    - Up to fifty (50) pages including screen shots
    - One (1) electronic copy

#### Vendor Roles and Responsibilities

- Create user documentation

#### State Roles and Responsibilities

- Availability to meet with vendor to finalize manuals
- Sign off on documents

#### Acceptance Process

- The manuals will go through two iterations of review and updates. After the second round of updates MDVPTB will sign off.

### **Stage 4: Training**

#### Tasks

- Grantee training
  - Two (2) training sessions for grantee users



- Each session includes up to (4) hours of training with up to twenty five (25) participants
- Grantor training
  - One (1) training session for MDVPTB users
  - Session includes up to (4) hours of training with up to fifteen (15) participants

#### Vendor Roles and Responsibilities

- Prepare training materials and administer the instructor led sessions

#### State Roles and Responsibilities

- Communication of training session information (date, location, etc.) to attendees
- Provide adequate meeting spaces with internet access and a projector

#### Acceptance Process

- Acceptance of the agenda for the training session is to serve as acceptance

### **Stage 5: Hosting**

#### Tasks

- Hosting
  - Includes hosting services as described in Attachment 1

#### Vendor Roles and Responsibilities

- Install application on production server'
- Test system performance and accessibility

#### State Roles and Responsibilities

- Confirm that the application is working properly in the production environment

#### Acceptance Process

- Confirmation by MDVPTB that the application is working properly in the production environment is to serve as acceptance

### **Stage 6: Annual Support**

#### Tasks

- Includes Annual Support services as described in Attachment 2

#### Vendor Roles and Responsibilities

- Providing support services as described in Attachment 2 beginning 12 months after the initiation of this agreement



### State Roles and Responsibilities

- NA

### Acceptance Process

- NA

## **Stage 7: Additional Professional Services**

### Tasks

Future enhancements may be needed, based on federal and state requirements. Maintenance may be needed, outside the scope of that described in Attachment 2. A separate Statement of Work will be written for these. The State may purchase additional services related to MDVPTB from this Contractor for up to 1,200 hours. Services must be dependent upon mutually agreed upon statement(s) of work between the Contractor and the State of Michigan. Once agreed to, the Contractor must 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.

*System enhancements / scope modifications include changes to the system that are necessary to meet:*

- New State policy requirements,
- New Federal regulations,
- New technology requested by the State, or
- Accommodate new or updated interfaces requested by the State.

### Vendor Roles and Responsibilities

- Prepare a proposal

### State Roles and Responsibilities

- Prepare a statement of work
- Review the contractor's proposal

### Acceptance Process

Specific acceptance criteria for software enhancements will be included in each Statement of Work.

The following criteria apply to software enhancement deliverables:

- Beta software is not accepted as final deliverable.
- MDTMB will review the software enhancements for acceptance of functionality, usability, installation, performance, security, standards compliance, backup/recovery and operation. Approvals will be written and signed by Agency/MDTMB Project Manager as identified in applicable statement of work. Unacceptable issues will be documented and submitted to the



Contractor. After issues are resolved or waived, the Contractor will resubmit software for approval.

- Software enhancements are installed and configured in appropriate environment (e.g. development, test, pre-live, live). Contingency plans and de-installation procedures and software are provided by Contractor and approved by the Agency/MDTMB Project Managers as identified in applicable statement of work.
- In a successful test, the Contractor will have demonstrated that the statement of work requirements for this enhancement are met. This will be documented with data input, screen prints, and/or reports. These test documents shall be provided to the DTMB Project Manager. Contractor will successfully test software enhancements in the development environment before moving the enhancement to the test and pre-live environments for final software testing by Agency/MDTMB. Approvals will be written and signed by Agency/MDTMB Project Managers.
- Unacceptable issues are defined as issues that identify a shortfall in meeting the requirements in the statement of work, for that enhancement. Unacceptable issues will be documented and submitted to the Contractor. After issues are resolved or waived, the Contractor will resubmit test software, data and results for approval. Only after successful State testing in the test and pre-live area will the enhancement be implemented in the production environment. This implementation should occur at an agreed upon time during non-business hours, such as late evenings or weekends.

*\* In the context of this SOW, the term "Contract" refers to data input screens configured in IntelliGrants. These screens will be used by MDVPTB to capture required information (budget amounts, performance measures, etc.) from the awarded contracts for reporting purposes. IntelliGrants will not be used to generate any Contract documents.*



## Deliverables

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The deliverables for this project include:

1. Requirements Document
  - Includes all tasks to be completed during this engagement
2. Project Plan
  - A Microsoft Project document with timelines for completion of each in-scope requirement
3. System Configuration I
  - Contract
4. System Configuration II
  - Expenditure Reports
5. System Configuration III
  - Activity Narrative Reports
6. System Configuration IV
  - Management Reports
7. System Setup
  - Security roles
  - Branding
  - System installation
8. Onsite Training
  - Grantee training
    - Two (2) training sessions for grantee users
    - Each session includes up to (4) hours of training with up to twenty five (25) participants
  - Grantor training
    - One (1) training session for MDVPTB users
    - Session includes up to (4) hours of training with up to fifteen (15) participants
9. Documentation
  - Admin manual
    - This is the equivalent of a Grantor manual and represents the user documentation a Grantor will require
  - Grantee manual
10. Annual Support
  - Annual fee including services as described in Attachment 2. Term begins 12 months after the initiation of this agreement.



## Project Control and Reports

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### ProjecTrax

Agate to provide ProjecTrax as a free, online tool for project tracking and management.

### Project Schedule

The approximate duration of the implementation is 9 months from the initiation of the project.

### Payment Schedule

Payment terms are net 45 days from issuance of approved invoices. Invoices for hosting and all fees are to be issued on the 1st of each month.

Hosting fees are to start 12 months after the initiation of the agreement. With the implementation expected to take 9 months, Agate plans to provide 3 months of hosting at no charge. If the duration of the implementation is shorter than 9 months fees will begin 12 months into the engagement. If the implementation should exceed 12 months, fees would begin hosting once the system enters the production environment.

### Travel and Expenses

Travel and expenses are not reimbursable under the terms of this agreement.

### Project Contacts

- Mark Epolito, Account Manager  
Agate Software, Inc.  
[mepolito@agatesoftware.com](mailto:mepolito@agatesoftware.com)  
(517) 336-2511
- Ted Lee, SOM PM  
DTMB  
[LeeT4@michigan.gov](mailto:LeeT4@michigan.gov)  
(517) 241-9073
- Julie Giddings, Agency Lead  
MDVPTB  
[GiddingsJ@michigan.gov](mailto:GiddingsJ@michigan.gov)  
(517) 241-7280



### **Agency Responsibilities and Assumptions**

- Meeting space with a projector and access to the Internet
- Access to MDVPTB subject matter experts
- Access to MDVPTB program specific information

### **Location of Where the Work is to be Performed**

Work is to be performed at Agate Software, Inc. and MDVPTB as needed

### **Expected Contractor Work Hours and Conditions**

8:00 am – 5:00 pm EST



## Pricing Information

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- This is a fixed-price, deliverable-based Contract. The rates quoted will be firm for the duration of this Contract.
- Hosting and Annual Support may be invoiced annually.
- The State will not pay for travel expenses including travel time, hotel, mileage, meals and parking.
- The State may pay maintenance and support charges on a monthly basis, in arrears. Payment of maintenance service/support of less than one (1) month's duration shall be prorated at 1/30th of the basic monthly maintenance charges for each calendar day.



**FY 2012 Costs**

ID	Deliverable	Description	Cost
1	Requirements Document	A description of all in-scope requirements for this engagement	\$ 6,500.00
2	Project Plan	A Microsoft Project document with timelines for completion of each in-scope requirement	\$ 800.00
3	System Configuration I	Includes in-scope work associated with the Contract	\$ 6,000.00
4	System Configuration II	Includes in-scope work associated with the Expenditure Reports	\$ 23,000.00
5	System Configuration III	Includes in-scope work on the Activity-Narrative Report	\$ 10,000.00
6	System Configuration IV	Includes in-scope work on the Management Reports	\$ 5,625.00
7	System Setup	Includes creation of security roles, branding and system installation	\$ 5,000.00
8	Training	Includes two (2) four hour training sessions for MDVPTB users and two (2) four hour sessions for grantees	\$ 2,600.00
9	Documentation	Includes one (1) admin manual and one (1) grantee manual	\$ 7,800.00
10	Additional Professional Services	Professional services to be used for maintenance and enhancement tasks to be billed at the rate of \$100.00 per hour for all service categories. Includes 100 hours.	\$ 10,000.00
<b>Total</b>			<b>\$ 77,325.00</b>

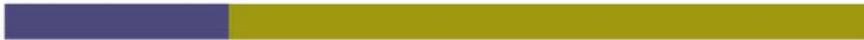
**FY 2013 Costs**

ID	Deliverable	Description	Cost
11	Annual Support	Annual fee including services as described in Attachment 2. Term begins 12 months from the initiation of the engagement. Fees are based on 8.7% of the total implementation costs.	\$ 6,732.50
12	Hosting (shared environment)	Includes services as described in Attachment 1. Includes 12 months of service.	\$ 18,000.00
13	Additional Professional Services	Professional services to be used for maintenance and enhancement tasks to be billed at the rate of \$100.00 per hour for all service categories. Includes 400 hours.	\$ 40,000.00
<b>Total</b>			<b>\$ 64,732.50</b>

**FY 2014 Costs**

ID	Deliverable	Description	Cost
14	Annual Support	Annual fee including services as described in Attachment 2. Includes 12 months of service.	\$ 6,732.50
15	Hosting (shared environment)	Includes services as described in Attachment 1. Includes 12 months of service.	\$ 18,000.00





16	Additional Professional Services	Professional services to be used for maintenance and enhancement tasks to be billed at the rate of \$100.00 per hour for all service categories. Includes 400 hours.		\$ 40,000.00
				<b>Total \$ 64,732.50</b>

**FY 2015 Costs**

ID	Deliverable	Description	Cost	
17	Annual Support	Annual fee including services as described in Attachment 2. Includes 12 months of service.	\$ 6,732.50	
18	Hosting (shared environment)	Includes services as described in Attachment 1. Includes 12 months of service.	\$ 18,000.00	
19	Additional Professional Services	Professional services to be used for maintenance and enhancement tasks to be billed at the rate of \$100.00 per hour for all service categories. Includes 400 hours.	\$ 40,000.00	
				<b>Total \$ 64,732.50</b>



## Attachment 1 – Hosting

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### Introduction

Agate Software, Inc. has created a colocation partnership with CRT/Arialink Broadband for hosting services. The decision was made to colocate with CRT based on the best interest of our clients. The physical location of the data center is approximately ten miles from Agate headquarters. This close proximity provides us with the ability to access our hardware very quickly. Our colocation partnership allows us to focus on our area of expertise (software development) and CRT to focus on theirs (hosting). The following factors were taken into consideration when making the decision to colocate our datacenter:

- Security
- Performance
- Connectivity
- Bandwidth
- Reliability

Agate's data center is collocated at:

#### **CRT/Arialink Broadband**

1223 Turner Street  
Lansing, MI 48906

Agate's data center is accessible to our clients on a 24/7/365 basis. Agate has provided a profile of the colocation data center facilities, networking infrastructure, security provisions, backup and recovery procedures, and disaster recovery plans to ensure client data is protected and is recoverable in case of a system failure.

### Entrance Security

- An Electronic Card Swipe is required to enter the locked entranceway.
- Second, an alarm code must be submitted for access to the data center door.
- A bio-metric hand scan with a corresponding pin number is the third level of protection needed each time an engineer enters the data center.

### Power Redundancy

- The data center is connected to the public utilities via redundant power grid connections for primary power requirements.
- Each hosting cabinet is provided power via a dedicated 20 amp circuit connected to an MGE Comet on-line UPS battery backup and conditioning system.



- The online UPS systems are rated to provide hours of uninterrupted backup power for the entire data center.
- After 15 seconds of consecutive downtime, our Kohler Diesel generator begins to supply power to the data center.
- The facility stores enough fuel on-site for extended run-time of greater than 1 week.
- All power outlets utilize Hubbell twist lock receptacles guarding against accidental power loss.

### **Quality Assurance Monitoring**

- Includes Managed Escalation Services (24x7x365).
- Provides real-time web based health reporting, trend reporting and remote management.
- Email notification of failures.
- Admin responds by following pre-written procedures as supplied by client to assist in failure recovery.

### **Back-Up**

- Managed backup service to data unit located in the Data Center
- Weekly Full (Data) Backups
- Daily Incremental (Data) Backups
- Up to 50Gb Disk Space
- Additional Disk Space is available if needed
- Off-site backup storage is available upon request

### **Bandwidth**

- 100Mb Full Duplex, Burstable
- The provider guarantees the host management facility utilizes a "dual entrance fiber facility" with a minimum of two competing fiber-optic telecommunication providers.
- The fiber-optic networks connected to the host management facility enter the building in different concealed locations and leave the facility in a minimum of two diversified geographical paths with a minimum of 500ft of buried and concealed under ground cable.
- The hosting center is engineered with enough bandwidth to scale on-demand due to superior fiber infrastructure.
- The network exists as Gigabit Ethernet (1000 Mb/s) as well as an OC3 (155 Mb/s) of online 'lit' fiber.
- The provider has enough dark fiber for ten additional OC12, OC48 or OC192 circuits.



- The provider's utilization is measured using the MRTG (multi-router traffic grapher) suite of SNMP monitoring tools.
- Each customer switch port will be monitored and reported for on-demand review.
- Bandwidth CIR's, the provider strictly monitors and guarantees this bandwidth is available at a minimum level.

### **Facility Environment**

- CRT/Arialink uses Netbotz to monitor key environmental factors like temperature and humidity. Netbotz uses active monitoring, early detection and instant alerting to protect critical assets from environmental conditions such as extreme heat & water leaks, human error, sabotage and virtually everything else in between, from power spikes to radioactive and chemical materials.
- Arialink's data center is connected to the public utilities via redundant power grid connections for primary power requirements.
- Each hosting cabinet is provided power via a dedicated 20 amp circuit connected to an MGE Comet on-line UPS battery backup and conditioning system.
- Arialink's online UPS system is rated to provide hours of uninterrupted backup power for the entire data center.
- After 15 seconds of consecutive downtime, our Kohler Diesel generator begins to supply power to the data center.
- Arialink stores enough fuel on-site for extended run-time of greater than 1 week.
- All power outlets utilize Hubbell twist lock receptacles guarding against accidental power loss.
- Arialink guarantees the host management facility utilizes a "dual entrance fiber facility" with a minimum of two competing fiber-optic telecommunication providers.
- The fiber-optic networks connected to the host management facility enters the building in different concealed locations and leaves the facility in a minimum of two diversified geographical paths with a minimum of 500ft of buried and concealed under ground cable.
- Arialink's HVAC system includes a back up system to keep the data center at its proper temperature levels.

### **Secure Communication**

Agate Software, Inc. will ensure that the database exists on a secure network that is not accessible by external Internet traffic. The Agate hosted environment network is protected by SonicWall Firewall and is configured to block all incoming traffic to the server except for those ports necessary for the SQL Server to communicate with the Web server. Any additional required ports should be added on an as needed basis. A secondary firewall resides onsite for emergency use in case of failure for critical systems including hosting services.



## Ports

- The SQL Server will have both SQL ports 1433 and 1434 open for communication with the Web Server.
- The Web Server will have ports 80 open for the Web traffic and port 118 for SQL traffic.
- Automatic e-mail notifications require SMTP port 25 to be used.

IntelliGrants can be implemented using SSL certification in conjunction with the proper security administration for the server(s) required for this system which will further guarantee the protection of this system and the data within it.

## Reliability

Agate Software works diligently to ensure that each IntelliGrants system is operating at its peak efficiency and has a minimum acceptable down time equating to less than .5% (or 99.5% up-time). All Agate hosted systems are monitored using ipMonitor software set to send alerts to Server Administrators in the event of unresponsiveness.

## System Availability

IntelliGrants will be accessible for all users on a 24 hours per day, 7 days per week, 365 days per year basis. Database backups, integrity checks, and optimization jobs are performed automatically and at regular intervals that will be scheduled in conjunction with client staff and at the least inconvenience to users. File pushes, database updates, and any other modifications made to the system are completed during off hours and most commonly take mere seconds to apply. Any downtime will take place during the client's non-business hours Monday through Friday, or anytime during the weekend.



## Attachment 2 – Annual Support

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### Annual Support & Help Desk

Agate Software, Inc. provides support associated with the IntelliGrants product. The annual support package includes the following services:

1. Live help desk support (8:00 am - 8:00 pm EST, Mon. – Fri.), our call center is housed and staffed at our Okemos, MI headquarters and can be contacted by to discuss product related questions. The helpdesk can be reached toll free at (800) 820-1890 or by email at [helpdesk@agatesoftware.com](mailto:helpdesk@agatesoftware.com).
2. Access to our proprietary, online web based issue resolution tool "ProjecTrax" which is available 24 hours a day, 7 days a week and 365 days a year for problem reporting and project tracking.
3. Weekly pushes (if needed) for patches, and bug fixes. Accelerated pushes for emergency fixes that may be time critical to keep the system operating at an optimum level.
4. Reasonable configuration/modifications required to support service packs/patches provided by third-party vendors in upgrading the web server or database server hardware/software on which the system is installed.
5. Quarterly global updates to the IntelliGrants product which affect all clients on the IntelliGrants platform. Product release notes are available upon request.
6. Access to optional major functionality upgrades that offer additional product features not included in Annual Support. Clients have the option to purchase the product features and associated implementation services or continue with the current system.

Annual Support begins the day the IntelliGrants product is installed in a production environment. Additional ongoing maintenance services are also available through mutually agreed upon statements of work.

### Help Desk Support for Organization Staff

Agate Help Desk is available to organization staff to answer general questions, report issues, and track bugs related to the use of IntelliGrants and its modules. Help desk staff can assist users in explaining the technical functionality and use of IntelliGrants modules such as:

- How to setup a new security role
- How to create a calculation field on a form
- How to add an automated e-mail notification
- How to modify the process workflow for an application



However, the Agate Help Desk is not to be used as a consulting resource for gathering ideas about designing form sets, configuring process workflows, or recommendations for business rules. Help desk is also not a replacement for formal training or re-training.

In addition, Agate's help desk should not be confused with any ongoing professional services related support during the development and maintenance of the system. Agate's designated project manager can be contacted directly to assist in any project-related matters. Those not associated with the project may still call the help desk with any product related questions.

### **Help Desk Support for End Users**

Agate Help Desk is designed to be the first tier of support for end-users (applicants/grantees) regarding the functional use of the system. Typical questions answered in this capacity include:

- How do I error-check my application
- How do I upload an attachment
- Where do I change my organization's address

For any questions related to the organization's grant programs, Agate Help Desk staff will direct the grantees to contact their respective grant program manager. This communication could be simply forwarding an email from the end-user asking the question to the program manager, providing the end-user with the program manager's phone number (and showing them where this can be found in the system for future reference), or recording a list of questions by the end-user and forwarding this to the appropriate program manager.

The agency personnel are the grant program experts, our help desk personnel are the IntelliGrants software experts. Questions that will be redirected to the organization's staff regarding grant related (program specific) topics include:

- Under what budget category should the following expense fall
- Why do I have \$x allocated to my project
- Should I submit an agreement amendment request because of the following reason

### **Application Defects**

Application defects will be corrected in a timely manner upon proper notification using Agate's Help Desk. Agate maintains a log of such defects and will categorize each defect to provide the organization with an estimated resolution timeline. Application defects will be categorized and resolved as follows:

#### **Severity Level 1 (SL1)**

The highest severity is 1 (SL1). A SL1 issue is considered critical and will initially have the highest priority. Examples of this are that the production system is down and normal business processes cannot proceed, more than 90% of the users are affected, or there is no timely workaround that provides the lost functionality. When a SL1 issue call is received, Agate Software will use all available resources to solve the problem as soon as possible (typically less than four (4) business hours).



### **Severity Level 2 (SL2)**

A severity 2 (SL2) issue is classified as urgent. The system is up, but not functioning at "normal" capacity. Examples of this are that a major function is not available and it is affecting a significant number of users, the incident causes a severe impact on business regardless of the environment, or no acceptable workaround is available; however, business operations can continue in a restricted fashion. When a SL2 issue call is received, Agate Software will use necessary resources to solve the problem within one (1) business day.

### **Severity Level 3 (SL3)**

A severity 3 (SL3) issue is classified as a routine call. It is a minor or intermittent incident occurring and not significantly affecting production. When a SL3 issue call is received, Agate Software will use necessary resources to solve the problem within five (5) business days.

### **Severity Level 4 (SL4)**

A severity 4 (SL4) issue is classified as a request or training call. It is a minor request not significantly affecting production. When a SL4 issue call is received, Agate Software will use necessary resources to solve the problem within thirty (30) business days.

### **Severity Level 5 (SL5)**

A severity 5 (SL5) issue is classified as an informational call. It is a minor call for information that does not require an immediate sense of urgency — a task to be completed soon. When a SL5 issue call is received, Agate Software will work with the client to determine the timeframe that resolution should occur.



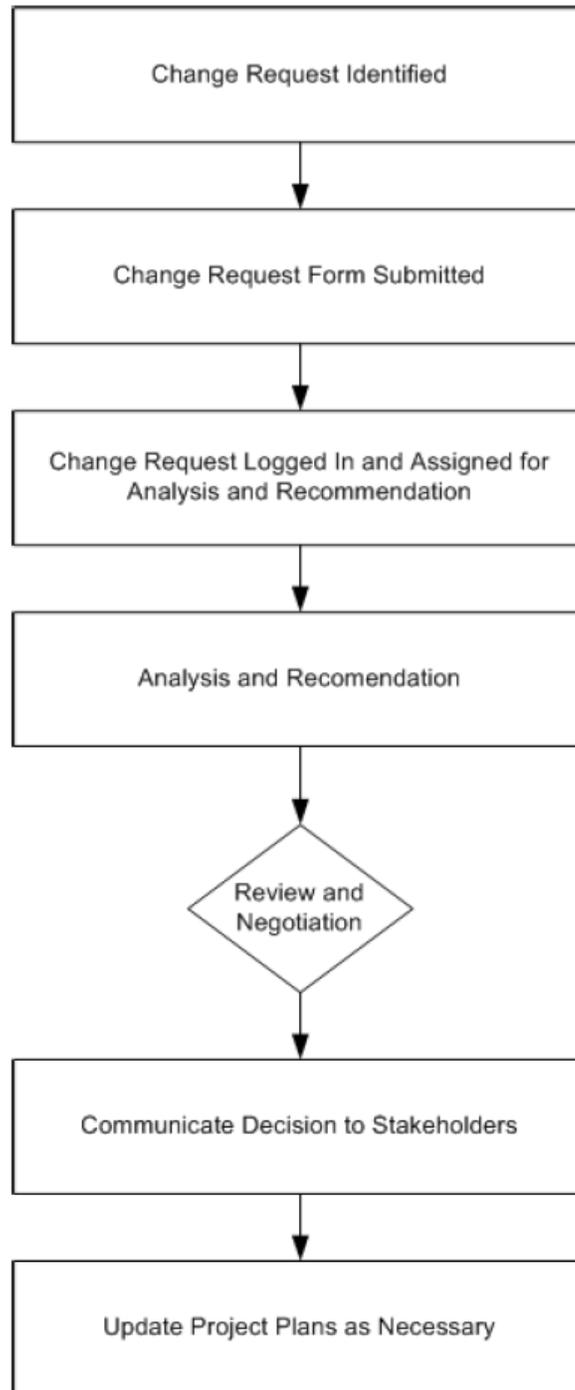


## Attachment 3 - Change Management

---

The following process flow explains the change request process. An explanation of the potential user roles that would fall within this process follows.





## Change Management Roles

### MDVPTB Requester

- Documents the request as clearly and completely as possible
- Submits request to the MDVPTB Project Manager

### MDVPTB Project Manager

- Reviews request and may either forward it to Agate for consideration and processing or declare the request out of scope and add the request to the parking lot list
  - Requests should be forwarded to Agate via ProjectTrax
- If forwarded to Agate for processing; discusses and resolves findings provided by Agate's review with the Agate Project Manager

### MDVPTB Project Sponsor

- Reviews change request, impact analysis and recommendation
- Either approves the request, denies the request or places the request on hold
- Ensures any required additional resources are available

### Agate Project Manager

- Tracks status of change request in ProjectTrax
- Clarifies change request if necessary
- Forwards change request, impact analysis and recommendation to project sponsor and appropriate management
- Makes necessary updates to project plan
- Keeps requester apprised of change request status
- Approves low impact requests

### Agate Business Analyst

- Researches and clarifies request as needed
- Identifies alternative solutions
- Makes recommendation
- Estimates time and resources required to add the change to the project's scope
- Identifies where added tasks fit into project plan
- Updates ProjectTrax with impact analysis



## Attachment 4 – Sample Training Agenda

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The agenda below is a sample from a three day session administered onsite for a past customer. A similar agenda will be created for MDVPTB training purposes.

### Day 1

8:00 AM: Kickoff - Computer & Materials Setup

8:15 AM: Labs 1 through 6

- Lab #1 – Categories
- Lab #2 & 3 – Process Flows
- Lab #4 – Document Templates – Creating and setting the header properties
- Lab #5 – Identification Numbers
- Lab #6 – Instances

10:00 AM: Break

10:15 AM: Labs 7-11

- Lab #7 – Eligibility
- Lab #8 – Roles
- Lab #9 – Menus for your Document Template
- Lab #10 – Designing a page layout
- Lab #11 - Creating new or editing existing forms

12:00 PM: Lunch

1:00 PM: Labs 12-14

- Lab #12 – Associations
- Lab #13 – Reviews
- Lab #14 – Lookups

2:30 PM: Break

2:45 PM: Labs 15-18 and Q&A

- Lab #15 – Notifications



- Lab #16 – Message Templates
- Lab #17 – Query Builder
- Lab #18 – Report Builder
- SQL Discussion about Stored Procedures as opposed to Query Builder
  - Query Builder Stored Procedure Structure Utility – Usually only available to Report Designer Role

4:00 PM: Labs Completed and continued Q&A

## Day 2

8:00 AM: Outline of today's activities and what we'll be covering.

8:15 AM: Application Workflow Creation using handouts

- Create Process Flow Statuses
- Create Status Connections
- Setup Active Documents List in Process Flow

10:00 AM: Break

10:15 AM: Document Template Creation and form building with handouts

- Use your experience from day one and the labs to build a document template
  - Be sure to setup the instance so you can test later
- Build the 5 forms in your handouts with all business rules and calculations
  - Use linked fields on the Budget Summary for summarizing information

12:00 PM: Lunch

1:00 PM: Form building with handouts CONTINUED...

- Use your experience from day one and the labs to build a document template
  - Be sure to setup the instance so you can test later.
- Build the 5 forms in your handouts with all business rules and calculations
  - Use linked fields on the Budget Summary for summarizing information
- Setup Form Permissions for the Authorized Official and Application Administrator

2:30 PM: Break



2:45 PM: Application Testing as an Applicant user

- Enter real information (Not just "TEST" in every field)
- Log back in as your Grant Designer to make any needed corrections
- Submit your application

4:00 PM: Q&A

### Day 3

8:00 AM: Outline of today's activities and what we'll be covering.

8:15 AM: Rollover of Application created yesterday

- Update FY on Document Template and Instance
- Update all Form names if needed
- Update linked fields if needed
- Setup Relationship to BHSTE Reimbursement 2012
- Test as applicant

10:00 AM: Break

10:15 AM: Rollover of Application created yesterday CONTINUED...

- Update FY on Document Template and Instance
- Update all Form names if needed
- Update linked fields if needed
- Setup Relationship to BHSTE Reimbursement 2012
- Test as applicant

12:00 PM: Lunch

1:00 pm: Q&A and Advanced Design discussion



## Attachment 5 – Acceptance Process

---

Electronic written approval from MDVPTB Agency Lead and DTMB PM is to serve as acceptance for tasks to ensure the system performs as its intended function.

User acceptance testing is conducted at various stages throughout the project. Agate expects MDVPTB to perform user acceptance testing for each of the milestones in the scope of work (Contract, Expenditure Reports, Activity Narrative Reports, Management Reports, and System Setup). Final user acceptance testing is also expected to be performed prior to the system going live.

### Design and Acceptance Process

Agate Software, Inc. and the MDVPTB will work together to design the final process flows, forms and management reports. The design process for forms and management reports is:

- MDVPTB provides design documents via e-copy
  - Agate will provide sample design documents upon request
  - Agate will finalize the first design document upon request
- Agate and MDVPTB review the design documents in a status meeting
- Once the design is finalized, MDVPTB will update design documents with data types, business rules, calculations and error checking
- Agate creates the Notice to Proceed(NTP)/Acceptance Form
- Agate and MDVPTB review design documents in a status meeting
- MDVPTB approves the NTP section of the NTP/Acceptance form via email
- Agate configures forms, tests and pushes data to the demo server once a week (on Fridays)
- Agate performs second round of testing on the demo server
- Agate notifies MDVPTB when testing is complete on demo
- MDVPTB performs user acceptance testing on demo and provides feedback to Agate
- Agate pushes data to the production server (This means that un-approved functionality will go to the production environment. Functionality will be hidden on production until considered completed by MDVPTB)
- Agate and MDVPTB discuss testing feedback in a status meeting and decide how to move forward
- Agate performs additional configuration if needed (go to eighth bullet above)
  - This bullet can be performed up to two times. Agate considers this one round of development and two rounds of configuration/development updates: (1) initial configuration; (2) additional configuration after user acceptance testing; (3) final round of configuration updates;
  - If additional rounds of configuration are needed, the change management process will be used. Usually, Agate and MDVPTB will determine how to move forward by either (1) moving a task that is not yet completed to the parking lot list so the resources allotted for that task can be used to perform the additional configuration (essentially exchanging one task for the other); (2) moving the additional configuration requests to the parking lot list;
  - Items on the parking lot list are considered out of scope and may be developed for subsequent phases of the project that are beyond the scope of work for this engagement



- MDVPTB approves Acceptance portion of NTP/Acceptance document via email
- Agate develops printable versions of the forms (PDFs) and the PDFs are pushed in the next weekly push
- Design and acceptance process is considered complete
- Bugs found after acceptance has been given will be fixed
  - A bug is defined as functionality not working according to the design in the NTP/Acceptance document
- If a design change is needed after acceptance the change management process will be used



**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

September 30, 2010

**NOTICE**  
**OF**  
**CONTRACT NO. 071B1300072**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF CONTRACTOR  <b>Agate Software</b> <b>2214 University Park Drive, Suite 102</b> <b>Okemos, MI 48865</b>  Email: <a href="mailto:mepolito@agatesoftware.com">mepolito@agatesoftware.com</a>		TELEPHONE Mark Epolito <b>(517) 336-2511</b>
		CONTRACTOR NUMBER/MAIL CODE
		BUYER/CA (517) 373-3993 <b>Dale Reif</b>
Contract Compliance Inspector: Sara Williams <b>Intelligrants Software Maintenance and Support</b>		
CONTRACT PERIOD: <b>5 yrs. + 5 one-year options</b> From: <b>October 1, 2010</b> To: <b>September 30, 2015</b>		
TERMS  <b>N/A</b>	SHIPMENT  <b>N/A</b>	
F.O.B.  <b>N/A</b>	SHIPPED FROM  <b>N/A</b>	
MINIMUM DELIVERY REQUIREMENTS <b>N/A</b>		
MISCELLANEOUS INFORMATION: .		

**THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT**

**ESTIMATED CONTRACT VALUE: \$5,933,500.00**

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

**CONTRACT NO. 071B1300072**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF CONTRACTOR  <b>Agate Software</b> <b>2214 University Park Drive, Suite 102</b> <b>Okemos, MI 48865</b>  Email: <a href="mailto:mepolito@agatesoftware.com">mepolito@agatesoftware.com</a>	TELEPHONE Mark Epolito <b>(517) 336-2511</b> CONTRACTOR NUMBER/MAIL CODE  BUYER/CA (517) 373-3993 <b>Dale Reif</b>
Contract Compliance Inspector: Sara Williams <b>Intelligrants Software Maintenance and Support</b>	
CONTRACT PERIOD: <b>5 yrs. + 5 one-year options</b> From: <b>October 1, 2010</b> To: <b>September 30, 2015</b>	
TERMS <p style="text-align: center;"><b>N/A</b></p>	SHIPMENT <p style="text-align: center;"><b>N/A</b></p>
F.O.B. <p style="text-align: center;"><b>N/A</b></p>	SHIPPED FROM <p style="text-align: center;"><b>N/A</b></p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;"><b>N/A</b></p>	
MISCELLANEOUS INFORMATION:  <p style="color: blue; font-weight: bold;">THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT.</p> <b>Estimated Contract Value: \$5,933,500.00</b>	

**THIS IS NOT AN ORDER:** This Contract Agreement is awarded on the basis of our inquiry bearing the ITB No. RFP-DR-084R020CVNS. Orders for delivery will be issued directly by the Department of Technology Management and Budget through the issuance of a Purchase Order Form.

<p><b>FOR THE CONTRACTOR:</b></p> <p style="text-align: center;"><b>Agate Software</b></p> <hr/> <p style="text-align: center;">Firm Name</p> <hr/> <p style="text-align: center;">Authorized Agent Signature</p> <hr/> <p style="text-align: center;">Authorized Agent (Print or Type)</p> <hr/> <p style="text-align: center;">Date</p>	<p><b>FOR THE STATE:</b></p> <hr/> <p style="text-align: center;">Signature</p> <p style="text-align: center;"><b>Greg Faremouth, Director</b></p> <hr/> <p style="text-align: center;">Name/Title</p> <p style="text-align: center;"><b>IT Division, Purchasing Operations</b></p> <hr/> <p style="text-align: center;">Division</p> <hr/> <p style="text-align: center;">Date</p>
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## **Article 1 – Statement of Work (SOW)**

### **1.000 Project Identification**

#### **1.001 PROJECT REQUEST**

The purpose of this Contract is for ongoing maintenance, enhancements and hosting options, for the electronic grant management application IntelliGrants™. The Contractor will be responsible for procuring all of the server hardware and software needed to host the software.

The resulting Contract will be for a term of five (5) years with five one-year options to renew. The Contract will serve the following State agencies.

- Michigan State Police (MSP)
- Michigan Department of Community Health (MDCH)
- Michigan Department of Energy, Labor and Economic Growth (MDELEG)
- Michigan Department of Education (MDE)

#### **1.002 BACKGROUND**

The State has a non-exclusive, royalty-free, site-wide, irrevocable, transferable license to use the IntelliGrants™ software. The IntelliGrants™ software is a commercial-off-the-shelf (COTS) application that allows state agencies to automate and streamline the grant life cycle. The software allows potential grantees the ability to apply for grants through the use of a web-portal. The portal provides comprehensive information about available grant programs, eligibility requirements, information on grant writing techniques, access to key statistics, and the ability for applicants to look up grant application status. Additionally, IntelliGrants™ also allows the state agencies to automate the workflow required to review, approve and deny grant applications.

### **1.100 Scope of Work and Deliverables**

#### **1.101 IN SCOPE**

The Contractor must provide the following services for the complete and successful support and maintenance of the IntelliGrants™ software including the functionality required for the State's business operations. This project consists of the following components:

- **Maintenance and Support** - Maintenance is defined as repair or replacement services provided after the expiration of the warranty period necessary to identify and repair software malfunctions in order to return the system to its original operating condition. Maintenance also includes an agreement to provide an annual renewable software subscription to include future upgrades (both major and minor revisions of the application) and ongoing Contractor product support, Help Desk and Technical support.
- **Enhancements for Current Implementations**– These projects will be determined at time of need and a separate work statement will be developed.
- **New Grant Implementations** – These projects will be determined at time of need and a separate work statement will be developed.
- **Hosting Option** – Contractor hosted solution to include procuring, installing and maintaining application server(s) and other required hardware/software. The solution must include production, development and test environments. The development and test hardware/operating system environment must resemble the production environment as closely as possible. The State reserves the option to continue with the Contractor hosted solutions, procure additional Contractor hosted solutions or hosting within the State's environment for the duration of the contract.

A more complete description of the supplies and/or services sought for this project is provided in Section 1.104, Work and Deliverables.

#### **1.102 OUT OF SCOPE**

The State is not seeking a new or replacement system.

#### **1.103 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).



Contractors are advised that the State has methods, policies, standards and procedures that have been developed over the years. Contractors are expected to provide proposals that conform to State IT policies and standards. All services and products provided as a result of this RFP must comply with all applicable State IT policies and standards. The Contractor awarded the Contract must request any exception to State IT policies and standards in accordance with MDTMB processes. The State may deny the exception request or seek a policy or standards exception.

**Enterprise IT Policies, Standards and Procedures:**

<http://www.michigan.gov/dmb/0,1607,7-150-56355---,00.html>

All software and hardware items provided by the Contractor must run on and be compatible with the MDTMB 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 MDTMB. 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 MDTMB 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 MDTMB, 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:**

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

**IT Strategic Plan:**

<http://www.michigan.gov/itstrategicplan>

**IT eMichigan Web Development Standard Tools:**

[http://www.michigan.gov/documents/Look\\_and\\_Feel\\_Standards\\_2006\\_v3\\_166408\\_7.pdf](http://www.michigan.gov/documents/Look_and_Feel_Standards_2006_v3_166408_7.pdf)

**The State Unified Information Technology Environment (SUITE):**

Includes standards for project management, systems engineering, and associated forms and templates – must be followed: <http://www.michigan.gov/suite>

**Agency Specific Technical Environment:**

- Database: Microsoft SQL Server 05 or greater
- Development Language: Microsoft ASP.NET
- Development Framework: Microsoft ASP.NET Framework 3.5 or greater
- Web Server: Windows Server 2003 R2 Standard Edition or greater
- Application Server: Windows Server 2003 R2 Standard Edition or greater
- Operating System: Microsoft Windows 2003 Standard Edition Service Pack 2 or greater
- Reporting Tools: IntelliGrants™ Custom Reporting Module

**1.104 WORK AND DELIVERABLE**

**A. SOFTWARE MAINTENANCE AND SUPPORT**

Contractor shall supply annual software maintenance and support services that provide systems management. Contractor must fully understand all the functionality provided by the IntelliGrants™ software. Contractor must be able to explain how each aspect of the software works and be able to document needed corrections for submission to IntelliGrants™ for resolution. Contractor's License and Support Level Agreement is attached as **Attachment 1**.



## 1. System Maintenance Activities – Contractor will provide Software maintenance.

System Maintenance refers to regular and routine work performed by the Contractor on the IntelliGrants™ software. This includes any work required to correct defects in the system operation as required to meet Contract requirements. This includes any routine file maintenance to update any information required for operation of the system such as data changes, constructing new edits, investigating batch job failures, investigating and correcting application defaults, repairing jobs run incorrectly, repairing problems due to system software failures, repairing problems due to operator or schedule error, rectifying problems due to web page, program, object, class, scripts, control language, or database errors, repairing security problems, repairing and restoring corrupted files, table structures, and databases, rectifying incorrect documentation, and repairing problems due to jobs run with incorrect data.

- a. The Contractor will perform system maintenance as defined in the Scope of Work for the component parts of the system after implementation.
- b. The maintenance period is for the life of the IntelliGrants™ software contract.
- c. All maintenance will be performed by qualified personnel who are familiar with the system.
- d. The Contractor will provide backup maintenance resources.
- e. The Contractor will provide for escalation of maintenance issues to ensure critical issues are resolved.
- f. The Contractor will provide remote diagnostic capabilities.
- g. The Contractor will provide one point of contact to report system malfunction whether malfunction is due to software or is of unknown origin. The Contractor will then be responsible for providing the appropriate remedy.
- h. The Contractor will make maintenance of the system available from the Contractor on an annually renewable Contract basis.
- i. Contractor will provide the following services for the system:
  - i. Error Correction. Upon notice by State of a problem with the system (that can be verified), the Contractor shall use reasonable efforts to correct or provide a working solution for the problem.
  - ii. The Contractor shall notify the State of any material errors or defects in the deliverables known, or made known to the Contractor from any source during the Contract term that could cause the production of inaccurate or otherwise materially incorrect, results.
  - iii. The Contractor shall initiate actions, as may be commercially necessary or proper to effect corrections of any such errors or defects.
- j. Contractor must coordinate implementing enhancements, new releases and other changes to IntelliGrants™ with State staff and Contractors.

## 2. Help Desk Support

Contractor must provide a toll free support telephone number. The support number shall be in operation during State business hours, 8:00 a.m. to 5:00 p.m. EST, Monday through Friday, excluding State holidays, with on-call staff available 24 hours per day.

Contractor must provide technical support from 8 a.m. to 5 p.m. EST; Monday through Friday with a minimum response time of 1 hour via a Contractor provided toll-free phone number. Internet support and e-mail to authorized state staff is also acceptable.



### 3. Adaptive and Preventive Maintenance Activities

- a. Adaptive and preventive maintenance addresses upgrades to the system due to technical changes to system components to keep the system maintainable, including the following services:
  - i. Upgrades or patches of the application server, Windows components, operating system, or other system and application software.
  - ii. Software modifications and upgrades necessary because of expiring third party Contractor support.
  - iii. Hardware, database, or application conversions that do not modify user functionality.
  - iv. One-time loads or reformats of user data.
  - v. Report distribution changes.
  - vi. Disaster recovery plan activities.
- b. The changes should be transparent to the end user.
- c. Adaptive release changes will be performed in a monthly patch release.
- d. For major upgrades requiring a more significant amount of time to develop, test, and implement, the changes should be completed as part of a development release or a quarterly release. Any major release which may require an upgrade to the server/desktop operating systems or third party software utilized as part of the IntelliGrants™ system must be documented and provided to the State three months prior to implementation to ensure all requirements can be obtained.
- e. Application Repair –Contractor must offer patches or fixes to acknowledged issues of the IntelliGrants™ software within an acceptable timeframe.

### 4. Performance Maintenance Activities – assist State staff in performance maintenance activities to improve the performance of the application.

- a. Performance maintenance includes the following services:
  - i. Improve the performance, maintainability, or other attributes of an application system.
  - ii. Data table restructuring.
  - iii. Data purges and or archiving to reduce/improve data storage.
  - iv. Run time improvements.
  - v. Replace utilities to reduce run time.
  - vi. Potential problem correction.
  - vii. Data set expansions to avoid space problems.

### 5. Documentation Update

Documentation (electronic or hard copy) for scheduled software releases to include changes or enhancements to the existing system. Documentation must include:

- For each software release the Contractor must provide release notes to the state detailing the changes/upgrades that are included in the software release. The release notes must identify reported bug fixes and new functionality added by the Contractor.
- At the request of the State, the Contractor must provide the State an electronic copy of the current System Administrator Manual or guide and a User Manual which will cover all functions of the IntelliGrants™ and the specific functions of the IntelliGrants™ as installed and configured for the State. The State must have unlimited reproduction rights to the manuals for the State and IntelliGrants™ management purposes.
- The Contractor must provide updated Systems Administrator manuals and User Manuals for major releases that include new functionality in the IntelliGrants™ system.
- Security Changes- Any changes to user access or administrator access security must be provided in the release notes.

## B. APPLICATION DEVELOPMENT FOR FUTURE ENHANCEMENTS

Future enhancements will be required based on federal and state requirements. A separate Statement of Work will be written for any required enhancements. Contractor will provide future development services and/or software enhancement meeting the definitions below.

The State may purchase additional services related to the environment from this Contractor for up to 12,650 hours over the 5-year Contract. Below is estimated hours per agency:



- Michigan State Police (MSP) – 3,100 Hours
- Michigan Department of Community Health (MDCH) - 2,550 hours
- Michigan Department of Energy, Labor and Economic Growth (MDELEG) – 1,000 hours
- Michigan Department of Education (MDE) – 6,000

Services must be dependent upon mutually agreed upon statement(s) of work between the Contractor and the State of Michigan. Once agreed to, the Contractor must 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.

System enhancements / scope modifications include changes to the system that are necessary to meet:

- a. New State policy requirements,
- b. New Federal regulations,
- c. New technology requested by the State, or
- d. Accommodate new or updated interfaces requested by the State.

The Contractor must be able to respond with costs and timelines to all requests to modify the IntelliGrants™ software to meet future needed functionality.

1. Application Adjustments & New Development - Contractor must provide the ability to request changes or new development work of the IntelliGrants™ software.
2. Interoperability Development with Other Applications - Contractor must provide the ability to request integrations or interoperability with other products or services of the IntelliGrants™ software.
3. System Interface Adjustments & New Interfaces – Contractor must provide the ability to request changes or customizations to the application user interface of the IntelliGrants™ software.

#### **Acceptance Criteria**

Specific acceptance criteria for software enhancements will be included in each Statement of Work. The following criteria apply to software enhancement deliverables:

- Beta software is not accepted as final deliverable.
- MDTMB will review the software enhancements for acceptance of functionality, usability, installation, performance, security, standards compliance, backup/recovery and operation. Approvals will be written and signed by Agency/MDTMB Project Manager as identified in applicable statement of work. Unacceptable issues will be documented and submitted to the Contractor. After issues are resolved or waived, the Contractor will resubmit software for approval.
- Software enhancements are installed and configured in appropriate environment (e.g. development, test, pre-live, live). Contingency plans and de-installation procedures and software are provided by Contractor and approved by the Agency/MDTMB Project Managers as identified in applicable statement of work.
- Contractor will successfully test software enhancements in the development environment before moving the enhancement to the test and pre-live environments for final software testing by Agency/MDTMB. Approvals will be written and signed by Agency/MDTMB Project Managers.
- Unacceptable issues will be documented and submitted to the Contractor. After issues are resolved or waived, the Contractor will resubmit test software, data and results for approval. Only after successful State testing in the test and pre-live area will the enhancement be implemented in the production environment. This implementation should occur at an agreed upon time during non business hours, such as late evenings or weekends.

#### **C. Application Development for New Grant Implementations**

New grant implementations may be requested. A separate Statement of Work (SOW) will be written for any required new implementation. The Contractor will bid each new implementation request as a fixed price proposal. The Contractor will not begin work until authorized by the SOW agency/MDTMB Project Managers. The order of completion will be determined by the SOW Agency/MDTMB Project Managers. All approvals will be in writing and signed by the SOW Agency/MDTMB Project Managers.



If applicable in a subsequent Statement of Work, Contractor will provide the following for any new implementation requested during the Contract period:

- a. Develop Requirements Documentation. The requirement document must be delivered to the SOW Agency/MDTMB Project Managers within one week of the last requirements meeting.
- b. Develop Project plan to include the following:
  - (ii) A work breakdown structure of the major phases of the project, accounting for all tasks, deliverables, resources and milestones for the design, development, testing and implementation of the enhancement including all interfaces and other agency resources.
  - (iii) Estimated hours and timetable for each task, deliverable, and milestone.
  - (iv) Contractor resource loading by task and role.
  - (v) State resource loading by task and role.
  - (vi) Any assumptions of constraints identified by the Contractor must be listed in the Project Plan.
  - (vii) List of any hardware that may need to be purchased, and get State approval before making the purchase.
  - (viii) The project plan must be delivered to the SOW Agency/MDTMB Project Manager within one week of the approval of the requirements document.
- c. Develop design documentation
- d. Program the application.
- e. Develop test cases and conduct unit testing.
- f. Develop installation plan.
- g. Conduct user acceptance testing to ensure that the requirements are satisfied and to validate the results.
  - (ii) Contractor will demonstrate to the State that all of the system requirements and functions have been satisfied.
  - (iii) The State will determine if the Contractor has fulfilled all of the requirements.
  - (iv) The Contractor will be responsible to modify any functionality or requirement that is viewed by the State as not acceptable.
  - (v) The Contractor will be responsible to add a function or requirement as defined in the requirements document that the Contractor failed to include.
  - (vi) All modifications and/or additions to a function in the system as defined in the requirements document will be performed without any additional cost.
  - (vii) This entire process will take place prior to installation and live implementation.
- h. Documentation - Provide complete, up-to-date, electronic manuals for the IntelliGrants™ system and its components, operations, maintenance, administration and use that are easily referenced, easily used and searchable.
- i. Develop User Training for State staff. The training can be by Web conferencing or at State of Michigan's facilities.
- j. If State hosted, provide technical support during installation to State's production environment. This includes a 90-day warranty period for the enhancement.
- k. Systems information and site data reports must be available on request.
- l. Warranty Requirements - After installation and configuration in the production environment, all issues discovered during the following 90-day period are resolved and accepted or waived by MDTMB.

### Acceptance Criteria

Specific acceptance criteria for new grant implementations will be included in each Statement of Work and may include, but not limited to, software product, development tools, support tools, data migration software, integration software and installation software. The following criteria apply to software deliverables:

- Beta software is not accepted as final deliverable.
- MDTMB will review the software for acceptance of functionality, usability, installation, performance, security, standards compliance, backup/recovery and operation. Approvals will be written and signed by SOW Agency/MDTMB Project Manager. Unacceptable issues will be documented and submitted to the Contractor. After issues are resolved or waived, the Contractor will resubmit software for approval.
- Software is installed and configured in appropriate environment (e.g. development, test, pre-live, live). Contingency plans and de-installation procedures and software are provided by Contractor and approved by the SOW Agency/MDTMB Project Managers.



- Contractor will successfully test software in the development environment before promoting it to the test and pre-live environments for final software testing by MDTMB. Approvals will be written and signed by SOW Agency/MDTMB Project Managers.
- Unacceptable issues will be documented and submitted to the Contractor. After issues are resolved or waived, the Contractor will resubmit test software, data and results for approval. Only after successful State testing in the test and pre-live area will the enhancement be implemented in the production environment. This implementation should occur at an agreed upon time during non business hours, such as late evenings or weekends.

#### D. Hosting Requirements

Contractor must provide pricing for all required hardware/software to support their proposed hosting solution. There must not be a disruption in the operation of the IntelliGrants™ software. The State reserves the option to continue with the Contractor hosted solutions, procure additional Contractor hosted solutions or hosting within the State's environment for the duration of the contract.

If applicable, Contractor will provide the following for hosting solutions during the Contract period:

- i. The Contractor must be able to provide the equipment maintenance and support over the period of the contract that include:
  - a. Software - Apply hot-fixes and service packs as needed to address anomalies and security concerns. Software support applies to third party software including operating system, back ups, antivirus software, and any application software.
  - b. Hardware - Apply Firmware and Bios updates as needed to address anomalies and security concerns. Updates are provided by the hardware Contractor and must be tested internally prior to install.
  - c. Server - Standard hardware and software maintenance as listed above to ensure reliability and optimal performance. This maintenance must occur weekly, monthly and quarterly depending on tasks.
  - d. Firewall - Must be deployed using current industry best practice model. Logs are to be monitored and maintained to ensure reliability and security.
  - e. Anti-Viral – Must provide a reliable industry-standard anti-virus system. Virus definition file maintenance and updates must be done daily to ensure complete virus protection. System must have weekly proactive scans during off peak periods.
  - f. Power Systems and Infrastructure – The facility must meet or exceed the Uptime Institute Tier 3 Data Facility standards. (<http://www.uptimeinstitute.org/>) Primary infrastructure systems must be monitored and redundant, with battery and generator backup power. Circuit load must be checked regularly to ensure reliable power to systems.
  - g. Internet Connectivity - Must be redundant connections with burstable bandwidth support. The connectivity must automatically adjust to handle increased load during an alert.
  - h. Telephone Lines - Service must be maintained and operational tested at regular intervals. Contractor must provide a toll free phone line for help desk support calls for all users of the system to call.
  - i. Encryption & Server Certificates - Must be registered and installed on all web servers. All web traffic transferred from the IntelliGrants™ system to the public internet must be encrypted.
  - j. Domain Names – Must be registered for both the primary and alternate sites. Domain Name Services for all public facing web servers and all internal systems must be maintained and redundant.
  - k. Systems & Data Backup - Must occur nightly. Data must be transferred to tape or other portable media, removed from the data center, and stored at a secure site.
  - l. Systems Failover – Failover to an alternate site is to be available at all times with little or no notice. In order to maintain uptime, critical services must be transferred in the event of a prolonged outage at the primary site. The alternate site must be located geographically separated from the primary site.
  - m. Server Computers – Increased hardware capacity may be needed to deal with system expansion and performance needs. The site infrastructure hosting the systems must have the capacity to add additional servers and meet power needs.



- n. Infrastructure Hardware - Should be added as needed to deal with system expansion and performance needs. The site infrastructure hosting the systems must have the capacity to add additional equipment and meet power needs.
- o. Power Systems as Needed - The site infrastructure hosting the systems must have the capacity to add additional power to meet growing needs.
- p. The IntelliGrants™ software must be fully available 99.9% of the time during normal business hours of 8AM to 5PM EST on business days and also available on-call during non-business hours to support the hosted infrastructure as well as application software.
  - 1. Response Times for Support - Contractors will be required to establish service level agreements (SLAs) with the State. The SLAs will specify:
    - a. minimum acceptable requirements for system uptime and availability,
    - b. system responsiveness,
    - c. number and expertise of technical support staff,
    - d. back-up schedules,
    - e. software updates,
    - f. system monitoring and maintenance,
    - g. responsiveness of technical support staff when problems are encountered (including help desk response time, time to answer, time to resolution, time to escalation, etc.)
    - h. problem management and escalation procedures,
    - i. types and frequency of management reports pertaining to the performance of the outsourcing Contractor.
- q. Performance and Capacity Management
  - Monitor, collect, and analyze Server utilization data for CPU, memory, and disk space;
  - Compile configuration data and usage patterns;
  - Monitor Server performance;
  - Establish thresholds and exception reporting procedures;
  - Perform tuning based on available performance data;
  - Review Server capacity trends;
  - With the State's assistance, establish a schedule for Contractor's performance of Server maintenance (for example, virus and malicious software detection, backup, disk space cleanup) and for implementing modifications and enhancements to the Web Hosting Environment so as to minimally impact availability of the Web Hosting Environment;
  - Fire detection and suppression a system for early detection of fires and suppression in a manner that does not damage state equipment
  - Air conditioning monitored facilities to control for temperature and humidity
  - Facility monitoring for electrical and mechanical failures, fire detection, and leak detection
  - Support services including system and network monitoring of backbone routers, WAN interfaces, routers, switches, and servers
  - Network problem detection, tracking, and resolution process
  - Installation of new and/or replacement hardware (procured by the State)
- r. Security Management (See Exhibit 1)
  - Define access controls for the Web Hosting Environment;
  - Attempt to monitor the Web Hosting Environment for unauthorized access;
  - Notify the State in accordance with the security procedures specified in the Contractor's Security Guidelines if the Contractor detects a security violation;
  - Follow the procedures specified in the Contractor Security Guidelines for logging, alarming and reporting of security violations;
  - Provide and maintain virus and malicious software avoidance, detection, and elimination software for Servers;
  - Conduct periodic security reviews;
  - Validate the correct use of logical control features such as time-out password screens and password and logon administration;
  - Verify proper assignment as per the State's instructions of access rights to source code and licensed software products; Physical security of the hosting location 24/7 and 365 day (monitored)
  - Controlled access to facilities during business, including logged access by time and date
  - Report access rights for State approval
- s. Storage Management Services



- Maintain and implement database backup and restore processes and procedures to Attempt to restore Servers following outages or corruption;
  - Conduct routine backup and restore procedures so as not to adversely impact scheduled operations, including regular backups from disk to tape for the Servers during nightly backup windows;
  - Assist the State in the restoration of files deleted or corrupted because of the State's actions.
  - The Web Hosting Environment will provide daily incremental backup of all Servers with the ability to restore to the most recent backup;
  - Backup and restore Content;
- t. Reports
1. Server Availability Reports
    - Outage Summary Report
    - Outage by Server Report
      - i. The start and end time of each outage;
      - ii. The duration of the outage;
      - iii. The IP address experiencing the outage;
      - iv. Reason for the outage, if known;
      - v. Description of the actions required to resolve the outage problem;
      - vi. Total time the Server was unavailable; and
      - vii. Name of the Contractors technical team member responsible for resolving the problem.
  2. Performance and Capacity Reports - graphical summary report contains a line graph and a bar chart showing the percentage of Servers in which utilization of a particular resource (i.e., CPU, memory, disk space) was either red, yellow, or green.
  3. Capacity Summary Report - contains a bar chart and a table showing the percentage of Servers in which utilization of a particular resource (i.e., CPU, memory, and disk space) was either red, yellow, or green as defined above. There is also a bar chart and table that show overall resource utilization. The report shows approximately 24 months of data.
- u. Hardware – See Attachment 2 for Contractor's diagram of their proposed Hardware and Network infrastructure. It must be an overall detailed architectural diagram including detailed graphics displaying the listed hardware and its relative placement in the architecture. The Contractor should clearly mark the communication channels between hardware units, identifying things like encryption where appropriate. The Contractor must identify any constraints or limitations with respect to the physical proximity of system components to one another or to user locations.

The Contractor's server information is in Attachment 3. The Production infrastructure shall be designed to be a High Availability environment.

It is expected the Contractor will meet the following Standards:

- Connection: Minimum uptime: 99.9%.
- System availability: 24x7x365.
- An Uninterruptible Power Supply must protect all servers.
- All servers should have dual network cards for fail-over.
- All servers must be located in a security locked room accessible only by authorized personnel
- All outside connections must pass through an approved State of Michigan Firewall.
- All servers are protected by State of Michigan approved Anti-Virus software.
- All servers must pass a State of Michigan approved vulnerability scan, with remediation in 48 hours.
- All servers have their OS upgraded upon release with ample time allowed for bug fixes.
- The Contractors proposed solution must include the following environments:
  - Development
  - Testing
  - Live Production



The contractor may propose combining environments; however, the Live Production environment must be physically separate from the other environments.

Redundancy shall be designed into the system to handle failure situations and make system maintenance possible without experiencing downtime. Server redundancy is not required; however backup procedures minimize the chance of data loss in the event of a hardware failure. In the event of a prolonged outage due to hardware failure, other servers are available to temporarily run the application. Contractor may provide additional alternatives that will meet the redundancy requirement and will provide a cost savings to the State.

ii. Hosting & Site Security (See Exhibit 1 and Attachment 4)

Physical system security is paramount. All systems must be housed within a secured facility and kept within a secured cabinet or cage. The facility must track and control all access entering and exiting the building and server room, as well as having physical security systems and video surveillance.

Additionally, the State of Michigan will have rights in accordance with the Software License Agreement to continue use of the software without renewal of the Software Maintenance Agreement.

- a. Location of Work Requirements - The work is to be performed, completed, and managed in (2) geographically separated level (3) secure data centers. The data centers must be located in different geographic regions of the United States e.g. California and Texas.
- b. Security and Confidentiality Requirements
  - i. All sites must be secured from Internet, Intranet or On-Site intrusions or attacks.
  - ii. All equipment must be kept secure from On-Site intrusions or attacks.
  - iii. All data must be secured from Internet, Intranet or On-Site intrusions or attacks.
  - iv. All Internet based data transmission must be encrypted.
- c. Note that a separate quotation for Contractor hosting is requested as part of the response to this RFP. The equipment must comply with the State of Michigan standards.

iii. Disaster Recovery (See Attachment 4)

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

The bid proposal must contain a disaster recovery strategy document and must include:

- The strategy to recover to a known good state & resume after a site-loss disaster
- The ability to recover on-line transactions since the last backup in a non-site-loss disaster
- An annual demonstration of the ability to recover full functionality to another site
- Off-site transport of system and database backups

The Contractor must provide a document indicating the strategy to maintain system availability in the event of the loss of one or more system components.

Security – In addition to documenting the disaster recovery and back up process, the Contractor must describe the security for all of the IT environments being hosted.

**Acceptance Criteria**

1. The services will be accepted in accordance with the requirements of the contract.
2. State will review maintenance requests within a mutually agreed upon timeframe from.
  - a. Approvals will be written and signed by State Project Managers.
  - b. Unacceptable issues will be documented and submitted to the Contractor.
  - c. After issues are resolved or waived, the Contractor will resubmit a revised Maintenance Request for Approval of Services within 10 days.
3. The Contractor will maintain the tools and connectivity installed, in compliance with DTMB standards, to properly support and monitor the application.

**E. Implementation to Contractor Hosted Environment**



Contractor shall provide Deliverables/Services and staff, and otherwise do all things necessary for or incidental to the implementation of the IntelliGrants™ software, including system migration, configuration, customization, and interfaces/integration. These deliverables are not all inclusive. Contractors may propose other deliverables.

**Deliverable(s):**

1. System Migration Plan– Contractor will be responsible for moving the application and data from the current State hosted environment. Install the same into the Contractor hosted environment and test the system for accuracy.
  - a. The migration plan shall include:
    - i. Description of migration process
  - b. Indication of any State resources needed.
2. Test Plan and Results - The Contractor shall provide comprehensive testing to validate functionality and performance.
  - Testing will include:
    - a. Hardware Performance testing:
      1. CPU utilization
      2. Disk space capacity
      3. Speed
    - b. Data verification in the databases
      1. Online database
      2. Reporting database
    - c. Application testing
      1. State staff
      2. Printing
    - d. Systems testing:
      1. Sequence for a complete system test
      2. Method for selecting cases
      3. Test cases
      4. Results and implications for overall system operation
      5. Corrective action and ongoing maintenance requirements
    - e. User acceptance testing
    - f. Quality assurance testing
    - g. Performance testing (including load testing)
  - The Contractor shall perform integration testing ensuring defects are not introduced when the unit is combined with the other software artifacts for the given iteration or release.
  - The Contractor shall conduct User Acceptance, Quality Assurance and Performance Testing in accordance with the Test Plan in the Quality Assurance (QA) Testing environment.
    - a. The Contractor shall resolve all defects and perform all other technical support required to successfully complete this testing.
    - b. The Contractor shall conduct a walk-through of the testing process and the test results to enhance State understanding and to facilitate the State approval process, including a review of performance metrics and general “lessons learned” from all testing participants.
  - User Acceptance Test (UAT) Cases
    - a. The Contractor will develop the test plans for User Acceptance Testing to include expected results.
    - b. The user acceptance test cases should include data edits and data validation criteria.
  - User Acceptance
    - a. The Contractor shall schedule, coordinate, monitor, and manage all User Acceptance Testing (UAT) activities.
    - b. The State is responsible for providing end users (from State and agents and lenders) and subject matter experts to perform the user acceptance testing.
    - c. Users participating in UAT are expected to sign off on the test results at the completion of UAT, providing their recommendation to the State Project Managers for formal approval and readiness for production.
    - d. State testers will update the test cases with the test results during UAT testing. If results are successful, they will provide their signoff by marking the test case as ‘Passed’.
    - e. The Contractor shall provide support for the duration of UAT.
    - f. This support must include both business and technical assistance.



- g. The Contractor shall support the UAT by:
    - i. Monitoring system performance
    - ii. Investigating why data was not processed
    - iii. Monitoring computer resource usage
    - iv. Participating in problem review meetings
    - v. Investigating problems and identifying potential problems
    - vi. Investigating and ensuring user access to the system in the UAT environment
    - vii. Generally helping the users execute tests and review results
  - h. The Contractor shall correct all defects discovered during UAT in a timely manner by following normal application development procedures – modifying the appropriate configuration items in the development environment, unit and integration testing the change, promoting the configuration item to the testing environment, quality assurance testing the change, and promoting the change to the UAT environment.
  - i. Promotions to UAT shall occur on a regularly scheduled basis unless it is an emergency situation (e.g., UAT cannot continue until problem is resolved).
  - j. The Contractor must have procedures and tools for tracking, reporting, and correcting deficiencies.
3. Pilot IntelliGrants™ Software Implementation  
Before statewide implementation, the Contractor shall conduct a Pilot implementation of the system. The pilot start date and duration will be agreed upon with the State.
4. IntelliGrants™ Software Implementation
- a. After a successful Pilot, the system will roll out.
  - b. Prior to implementation, the Contractor will have full responsibilities to:
    - i. Monitor progress against a detailed installation plan ensuring each task is completed accurately and on schedule.
    - ii. Communicate with the State Project Managers to provide status and escalate issues.
    - iii. Participate with the implementation team to coordinate activities, discuss status, and resolve issues.
    - iv. Coordinate implementation with training.
    - v. Ensure data readiness.
    - vi. Coordinate with the data conversion team to address manual and automated data correction activities pre- and post-conversion.
    - vii. Provide staff to perform manual and automated data, cleanup/conversion activities.
    - viii. Implement new workflow:
    - ix. Work with State staff (DTMB and MSHDA) to plan the transition to the new workflow.
    - x. Provide onsite post-implementation help to resolve workflow and application issues.

**Acceptance Criteria**

Service Deliverables include, hosting, system migration, security, help desk, and support.

- 1. The services will be accepted in accordance with the requirements of the contract.
- 2. State will review a Request for Approval of Services within a mutually agreed upon timeframe from completion or implementation.
  - a. Approvals will be written and signed by State Project Managers.
  - b. Unacceptable issues will be documented and submitted to the Contractor.
  - c. After issues are resolved or waived, the Contractor will resubmit a Request for Approval of Services for approval within 30 days of receipt.
- 3. State will review migrated and configured data within a mutually agreed upon timeframe from completion.
  - a. Approvals will be written and signed by State Project Managers.
  - b. Unacceptable issues will be documented and submitted to the Contractor.
  - c. After issues are resolved or waived, the Contractor will resubmit a request for approval within 30 days of receipt.
- 4. The Contractor has the tools and connectivity installed, in compliance with DTMB standards, to properly support and monitor the application.

**1.200 Roles and Responsibilities**

**1.201 CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES**

**A. Contractor Staff**

- Must provide normal services Monday through Friday, 8:00 a.m. to 5:00 p.m. EST



- All personnel provided by the Contractor must be subject to the rules, regulations, approval, and policies of the State.
- Must replace all employees whose work was found to be unsatisfactory within five (5) business days of notification
- As required, the Contractor must attend and conduct program meetings using appropriate and most effective communication methods. These meetings will review the status of any outstanding service requests submitted to the Contractor.
- Must provide responses to program-related questions and issues
- Support personnel must be English-speaking and be available via a toll-free number. Due to sensitivities of the system, it is preferable for all support activities to occur in the continental United States of America.

The Contractors Maintenance Responsibilities include the following:

- Must support the application in any technical capacity necessary to ensure proper functionality
- Must provide help desk support for handling inquiries and problems
- Must implement timely resolutions to problems, traveling to State facilities as needed

The Contractor must designate a Single Point of Contact (SPOC). The SPOC must perform the following duties:

- Supporting the management of the Contract
- Facilitating dispute resolution
- Advising the State of performance under the terms and conditions of the Contract.

The State reserves the right to require a change in the current SPOC if the assigned SPOC is not, in the opinion of the State, adequately serving the needs of the State.

**B. On Site Work Requirements**

**1. Security and Background Check Requirements**

Contractor must present certifications evidencing satisfactory Michigan State Police Background checks ICHAT and drug tests for all staff identified for assignment to this project. Contractor personnel will be required to complete and submit an RI-8 Fingerprint Card for the Michigan and National Crime Information Center (NCIC) Finger Prints, if required by State agency. Contractor will pay for all costs associated with ensuring their staff meets all requirements.

**2. Location of Work**

The work is to be performed, completed and managed at the Contractors location or at State facilities.

**3. Hours of Operation:**

- a. Normal State working hours are 8:00 a.m. to 5:00 p.m. EST, Monday through Friday, with work performed as necessary after those hours to meet project deadlines. No overtime will be authorized or paid.
- b. The State is not obligated to provide State management of assigned work outside of normal State working hours. The State reserves the right to modify the work hours in the best interest of the project.
- c. Contractor shall observe the same standard holidays as State employees. The State does not compensate for holiday pay.

**4. Travel:**

- a. No travel or expenses will be reimbursed. This includes travel costs related to training provided to the State by Contractor.
- b. Travel time will not be reimbursed.

**1.202 STATE STAFF, ROLES, AND RESPONSIBILITIES**

For future enhancements and new implementations, State staff to be identified in each subsequent statement of work.

DTMB Agency Services/Agency staff must oversee:



Maintenance and Support Responsibilities

- Provide a technical production support team available for transition activities
- Provide a technical support team for hardware support, patches and maintenance

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

Name	Agency/Division	Title
Sara Williams	MDTMB/Agency Services	Contract Administrator

**1.300 Project Plan**

**1.301 PROJECT PLAN MANAGEMENT**

**1.302 REPORTS**

**1.400 Project Management**

Section 1.400 may be required for each subsequent Statement of Work that requests enhancement services through this contract.

**1.401 ISSUE MANAGEMENT**

An issue is an identified event that if not addressed may affect schedule, scope, quality, or budget. The Contractor shall maintain an issue log for issues relating to the provision of services under this Contract. The issue management log must be communicated to the MDTMB Project Manager on an agreed upon schedule, with email notifications and updates. Issue management shall include an escalation path for resolution. The issue log must be updated and must contain the following minimum elements:

- Description of issue
- Issue identification date
- Responsibility for resolving issue.
- Priority for issue resolution (to be mutually agreed upon by the State and the Contractor)
- Resources assigned responsibility for resolution
- Resolution date
- Resolution description

**1.402 RISK MANAGEMENT**

A risk is an unknown circumstance or event that, if it occurs, may have a positive or negative impact on the project. The Contractor is responsible for establishing a risk management plan and process, including the identification and recording of risk items, prioritization of risks, definition of mitigation strategies, monitoring of risk items, and periodic risk assessment reviews with the State.

A risk management plan format shall be submitted to the State for approval within twenty (20) business days after the effective date of the Contract resulting from the upcoming RFP. The risk management plan will be developed during the initial planning phase of the project, and be in accordance with the State’s PMM methodology. Once both parties have agreed to the format of the plan, it shall become the standard to follow for the duration of the contract. The plan must be updated bi-weekly, or as agreed upon.

The Contractor shall provide the tool to track risks. The Contractor will work with the State and allow input into the prioritization of risks.

The Contractor is responsible for identification of risks for each phase of the project. Mitigating and/or eliminating assigned risks will be the responsibility of the Contractor. The State will assume the same responsibility for risks assigned to them.

**1.403 CHANGE MANAGEMENT**

Change management is defined as the process to communicate, assess, monitor, and control all changes to system resources and processes. The State also employs change management in its administration of the Contract.



If a proposed Contract change is approved by the Agency, the Contract Administrator will submit a request for change to the Department of Management and Budget, Purchasing Operations Buyer, who will make recommendations to the Director of Purchasing Operations regarding ultimate approval/disapproval of change request. If the DMB Purchasing Operations Director agrees with the proposed modification, and all required approvals are obtained (including State Administrative Board), the Purchasing Operations Buyer will issue an addendum to the Contract, via a Contract Change Notice. **Contractors who provide products or services prior to the issuance of an authorized Contract Change Notice are at risk of non-payment for the out-of-scope/pricing products and/or services.**

The Contractor must employ change management procedures to handle such things as “out-of-scope” requests or changing business needs of the State while the migration is underway.

The Contractor will employ the change control methodologies to justify changes in the processing environment, and to ensure those changes will not adversely affect performance or availability.

### **1.500 Acceptance**

#### **1.501 CRITERIA**

Acceptance criteria for deliverables will be identified in each individual project SOW.

#### **1.502 FINAL ACCEPTANCE**

Final acceptance criteria for deliverables will be identified in each individual project SOW.

### **1.600 Compensation and Payment**

#### **1.601 COMPENSATION AND PAYMENT**

This is a fixed price deliverable based Contract. The rates quoted will be firm for the duration of this Contract. See **Attachment 5** for Contract Cost Table.

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

The parties agree that the Services/Deliverables to be rendered by Contractor pursuant to this Contract (and any future amendments of it) will be defined and described in detail in Statements of Work or Purchase Orders (PO) executed under this Contract. Contractor shall not be obliged or authorized to commence any work to implement a Statement of Work until authorized via a PO issued against this Contract. Contractor shall perform in accordance with this Contract, including the Statements of Work/Purchase Orders executed under it.

**Invoicing** - Contractor must submit properly itemized invoices to “Bill To” Address on the Purchase Order. Incorrect or incomplete invoices will be returned to contractor for correction and reissue. 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.

The State may pay maintenance and support charges on a monthly basis, in arrears. Payment of maintenance service/support of less than one (1) month’s duration shall be prorated at 1/30th of the basic monthly maintenance charges for each calendar day.



## **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 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 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 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 Buyer 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:

Sara Williams, Contract Liaison  
 Michigan Department of Information Technology  
 Chandler Plaza, 2nd Floor  
 300 E. Michigan Avenue  
 Lansing, MI 48913  
 Williamss11@michigan.gov  
 (517) 335-1277

**2.023 PROJECT MANAGER – DELETED NA**

**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:  
Mark Epolito  
2214 University Park Dr., Suite 102  
Okemos, MI 48864

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 Contractor 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**

- (a) The Contractor must provide the Contract Compliance Inspector with the names of the Key Personnel.
- (b) Key Personnel must be dedicated as defined in the Statement of Work to the Project for its duration in the applicable Statement of Work with respect to other individuals designated as Key Personnel for that Statement of Work.
- (c) The State shall have the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor shall notify the State of the proposed assignment, shall introduce the individual to the appropriate State representatives, and shall provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State shall provide a written explanation including reasonable detail outlining the reasons for the rejection.
- (d) Contractor must not remove any Key Personnel from their assigned roles on the Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal ("Unauthorized Removal"). Unauthorized Removals does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation or for cause termination of the Key Personnel's employment. Unauthorized Removals does not include replacing Key Personnel because of promotions or other job movements allowed by Contractor personnel policies or Collective Bargaining Agreement(s) as long as the State receives prior written notice before shadowing occurs and Contractor provides 30 days of shadowing unless parties agree to a different time period. The Contractor with the State must review any Key Personnel replacements, and appropriate transition planning will be established. Any Unauthorized Removal may be considered by the State to be a material breach of the Contract, in respect of which the State may elect to exercise its termination and cancellation rights.



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

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

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

Goods provided by Contractor under this agreement shall be merchantable. All goods provided under this Contract shall be of good quality within the description given by the State, shall be fit for their ordinary purpose, shall be adequately contained and packaged within the description given by the State, shall conform to the agreed upon specifications, and shall conform to the affirmations of fact made by the Contractor or on the container or label.



### **2.123 WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE**

When the Contractor has reason to know or knows any particular purpose for which the goods are required, and the State is relying on the Contractor's skill or judgment to select or furnish suitable goods, there is a warranty that the goods are fit for such purpose.

### **2.124 WARRANTY OF TITLE**

Contractor shall, in providing goods to the State, convey good title in those goods, whose transfer is right and lawful. All goods provided by Contractor shall be delivered free from any security interest, lien, or encumbrance of which the State, at the time of contracting, has no knowledge. Goods provided by Contractor, under this Contract, shall be delivered free of any rightful claim of any third person by of infringement or the like.

### **2.125 EQUIPMENT WARRANTY**

To the extent Contractor is responsible under this Contract for maintaining equipment/system(s), Contractor represents and warrants that it shall maintain the equipment/system(s) in good operating condition and shall undertake all repairs and preventive maintenance according to the applicable manufacturer's recommendations for the period specified in this Contract.

The Contractor represents and warrants that the equipment/system(s) are in good operating condition and operates and performs to the requirements and other standards of performance contained in this Contract, when installed, at the time of Final Acceptance by the State, and for a period of (1) one year commencing upon the first day following Final Acceptance.

Within 45 business days of notification from the State, the Contractor must adjust, repair or replace all equipment that is defective or not performing in compliance with the Contract. The Contractor must assume all costs for replacing parts or units and their installation including transportation and delivery fees, if any.

The Contractor must provide a toll-free telephone number to allow the State to report equipment failures and problems to be remedied by the Contractor.

The Contractor agrees that all warranty service it provides under this Contract must be performed by Original Equipment Manufacturer (OEM) trained, certified and authorized technicians.

The Contractor is the sole point of contact for warranty service. The Contractor warrants that it shall pass through to the State any warranties obtained or available from the original equipment manufacturer, including any replacement, upgraded, or additional equipment warranties.

### **2.126 EQUIPMENT TO BE NEW**

If applicable, all equipment provided under this Contract by Contractor shall be new where Contractor has knowledge regarding whether the equipment is new or assembled from new or serviceable used parts that are like new in performance or has the option of selecting one or the other. Equipment that is assembled from new or serviceable used parts that are like new in performance is acceptable where Contractor does not have knowledge or the ability to select one or other, unless specifically agreed otherwise in writing by the State.

### **2.127 PROHIBITED PRODUCTS**

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

### **2.128 CONSEQUENCES FOR BREACH**

In addition to any remedies available in law, if the Contractor breaches any of the warranties contained in this section, the breach may be considered as a default in the performance of a material obligation of this Contract.



**2.130 Insurance**

**2.131 LIABILITY INSURANCE**

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

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

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

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

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

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

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

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

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

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSURED 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 INSURED 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 30 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 Contractors, 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 Contractors. 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, DTMB, 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, DTMB, 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 Contractor 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**

### **2.251 DELIVERY OF DELIVERABLES**

A list of the Deliverables to be prepared and delivered by Contractor including, for each Deliverable, the scheduled delivery date and a designation of whether the Deliverable is a document ("Written Deliverable") or a Custom Software Deliverable is attached, if applicable. All Deliverables shall be completed and delivered for State review and written approval and, where applicable, installed in accordance with the State-approved delivery schedule and any other applicable terms and conditions of this Contract.

Prior to delivering any Deliverable to the State, Contractor will first perform all required quality assurance activities, and, in the case of Custom Software Deliverables, System Testing to verify that the Deliverable is complete and in conformance with its specifications. Before delivering a Deliverable to the State, Contractor shall certify to the State that (1) it has performed such quality assurance activities, (2) it has performed any applicable testing, (3) it has corrected all material deficiencies discovered during such quality assurance activities and testing, (4) the Deliverable is in a suitable state of readiness for the State's review and approval, and (5) the Deliverable/Service has all Critical Security patches/updates applied.

In discharging its obligations under this Section, Contractor shall be at all times (except where the parties agree otherwise in writing) in compliance with Level 3 of the Software Engineering Institute's Capability Maturity Model for Software ("CMM Level 3") or its equivalent.

### **2.252 CONTRACTOR SYSTEM TESTING**

Contractor will be responsible for System Testing each Custom Software Deliverable in Contractor's development environment prior to turning over the Custom Software Deliverable to the State for User Acceptance Testing and approval. Contractor's System Testing shall include the following, at a minimum, plus any other testing required by CMM Level 3 or Contractor's system development methodology:

Contractor will be responsible for performing Unit Testing and incremental Integration Testing of the components of each Custom Software Deliverable.

Contractor's System Testing will also include Integration Testing of each Custom Software Deliverable to ensure proper inter-operation with all prior software Deliverables, interfaces and other components that are intended to inter-operate with such Custom Software Deliverable, and will include Regression Testing, volume and stress testing to ensure that the Custom Software Deliverables are able to meet the State's



projected growth in the number and size of transactions to be processed by the Application and number of users, as such projections are set forth in the applicable Statement of Work.

Contractor's System Testing will also include Business Function Testing and Technical Testing of each Application in a simulated production environment. Business Function Testing will include testing of full work streams that flow through the Application as the Application will be incorporated within the State's computing environment. The State shall participate in and provide support for the Business Function Testing to the extent reasonably requested by Contractor. Within ten (10) days before the commencement of Business Function Testing pursuant to this Section, Contractor shall provide the State for State review and written approval Contractor's test plan for Business Function Testing.

Within five (5) Business Days following the completion of System Testing pursuant to this **Section**, Contractor shall provide to the State a testing matrix establishing that testing for each condition identified in the System Testing plans has been conducted and successfully concluded. To the extent that testing occurs on State premises, the State shall be entitled to observe or otherwise participate in testing under this Section as the State may elect.

### **2.253 APPROVAL OF DELIVERABLES, IN GENERAL**

All Deliverables (Written Deliverables and Custom Software Deliverables) require formal written approval by the State, in accordance with the following procedures. Formal approval by the State requires that the Deliverable be confirmed in writing by the State to meet its specifications, which, in the case of Custom Software Deliverables, will include the successful completion of State User Acceptance Testing, to be led by the State with the support and assistance of Contractor. The parties acknowledge that the approval process set forth herein will be facilitated by ongoing consultation between the parties, visibility of interim and intermediate Deliverables and collaboration on key decisions.

The State's obligation to comply with any State Review Period is conditioned on the timely delivery of Deliverables being reviewed. If Contractor fails to provide a Deliverable to the State in a timely manner, the State will nevertheless use commercially reasonable efforts to complete its review or testing within the applicable State Review Period.

Before commencement of its review or testing of a Deliverable, the State may inspect the Deliverable to confirm that all components of the Deliverable (e.g., software, associated documentation, and other materials) have been delivered. If the State determines that the Deliverable is incomplete, the State may refuse delivery of the Deliverable without performing any further inspection or testing of the Deliverable. Otherwise, the review period will be deemed to have started on the day the State receives the Deliverable and the applicable certification by Contractor in accordance with this Section.

The State will approve in writing a Deliverable upon confirming that it conforms to and, in the case of a Custom Software Deliverable, performs in accordance with, its specifications without material deficiency. The State may, but shall not be required to, conditionally approve in writing a Deliverable that contains material deficiencies if the State elects to permit Contractor to rectify them post-approval. In any case, Contractor will be responsible for working diligently to correct within a reasonable time at Contractor's expense all deficiencies in the Deliverable that remain outstanding at the time of State approval.

If, after three (3) opportunities (the original and two repeat efforts), Contractor is unable to correct all deficiencies preventing State approval of a Deliverable, the State may: (i) demand that Contractor cure the failure and give Contractor additional time to cure the failure at the sole expense of Contractor; or (ii) keep this Contract in force and do, either itself or through other parties, whatever Contractor has failed to do, in which event Contractor shall bear any excess expenditure incurred by the State in so doing beyond the contract price for such Deliverable and will pay the State an additional sum equal to ten percent (10%) of such excess expenditure to cover the State's general expenses without the need to furnish proof in substantiation of such general expenses; or (iii) terminate this Contract for default, either in whole or in part by notice to Contractor (and without the need to afford Contractor any further opportunity to cure). Notwithstanding the foregoing, the State shall not use, as a basis for exercising its termination rights under this Section, deficiencies discovered in a repeat State Review Period that could reasonably have been discovered during a prior State Review Period.

The State, at any time and in its own discretion, may halt the UAT or approval process if such process reveals deficiencies in or problems with a Deliverable in a sufficient quantity or of a sufficient severity as to



make the continuation of such process unproductive or unworkable. In such case, the State may return the applicable Deliverable to Contractor for correction and re-delivery prior to resuming the review or UAT process and, in that event, Contractor will correct the deficiencies in such Deliverable in accordance with the Contract, as the case may be.

Approval in writing of a Deliverable by the State shall be provisional; that is, such approval shall not preclude the State from later identifying deficiencies in, and declining to accept, a subsequent Deliverable based on or which incorporates or inter-operates with an approved Deliverable, to the extent that the results of subsequent review or testing indicate the existence of deficiencies in the subsequent Deliverable, or if the Application of which the subsequent Deliverable is a component otherwise fails to be accepted pursuant to **Section 2.080**.

#### **2.254 PROCESS FOR APPROVAL OF WRITTEN DELIVERABLES**

The State Review Period for Written Deliverables will be the number of days set forth in the applicable Statement of Work following delivery of the final version of the Written Deliverable (failing which the State Review Period, by default, shall be five (5) Business Days for Written Deliverables of one hundred (100) pages or less and ten (10) Business Days for Written Deliverables of more than one hundred (100) pages). The duration of the State Review Periods will be doubled if the State has not had an opportunity to review an interim draft of the Written Deliverable prior to its submission to the State. The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Written Deliverable is approved in the form delivered by Contractor or describing any deficiencies that shall be corrected prior to approval of the Written Deliverable (or at the State's election, subsequent to approval of the Written Deliverable). If the State delivers to Contractor a notice of deficiencies, Contractor will correct the described deficiencies and within five (5) Business Days resubmit the Deliverable in a form that shows all revisions made to the original version delivered to the State. Contractor's correction efforts will be made at no additional charge. Upon receipt of a corrected Written Deliverable from Contractor, the State will have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Written Deliverable to confirm that the identified deficiencies have been corrected.



## **2.255 PROCESS FOR APPROVAL OF CUSTOM SOFTWARE DELIVERABLES**

The State will conduct UAT of each Custom Software Deliverable in accordance with the following procedures to determine whether it meets the criteria for State approval – i.e., whether it conforms to and performs in accordance with its specifications without material deficiencies.

Within thirty (30) days (or such other number of days as the parties may agree to in writing) prior to Contractor's delivery of any Custom Software Deliverable to the State for approval, Contractor shall provide to the State a set of proposed test plans, including test cases, scripts, data and expected outcomes, for the State's use (which the State may supplement in its own discretion) in conducting UAT of the Custom Software Deliverable. Contractor, upon request by the State, shall provide the State with reasonable assistance and support during the UAT process.

For the Custom Software Deliverables listed in an attachment, the State Review Period for conducting UAT will be as indicated in the attachment. For any other Custom Software Deliverables not listed in an attachment, the State Review Period shall be the number of days agreed in writing by the parties (failing which it shall be forty-five (45) days by default). The State Review Period for each Custom Software Deliverable will begin when Contractor has delivered the Custom Software Deliverable to the State accompanied by the certification required by this **Section** and the State's inspection of the Deliverable has confirmed that all components of it have been delivered.

The State's UAT will consist of executing test scripts from the proposed testing submitted by Contractor, but may also include any additional testing deemed appropriate by the State. If the State determines during the UAT that the Custom Software Deliverable contains any deficiencies, the State will notify Contractor of the deficiency by making an entry in an incident reporting system available to both Contractor and the State. Contractor will modify promptly the Custom Software Deliverable to correct the reported deficiencies, conduct appropriate System Testing (including, where applicable, Regression Testing) to confirm the proper correction of the deficiencies and re-deliver the corrected version to the State for re-testing in UAT. Contractor will coordinate the re-delivery of corrected versions of Custom Software Deliverables with the State so as not to disrupt the State's UAT process. The State will promptly re-test the corrected version of the Software Deliverable after receiving it from Contractor.

Within three (3) business days after the end of the State Review Period, the State will give Contractor a written notice indicating the State's approval or rejection of the Custom Software Deliverable according to the criteria and process set out in this **Section**.

## **2.256 FINAL ACCEPTANCE**

"Final Acceptance" shall be considered to occur when the Custom Software Deliverable to be delivered has been approved by the State and has been operating in production without any material deficiency for fourteen (14) consecutive days. If the State elects to defer putting a Custom Software Deliverable into live production for its own reasons, not based on concerns about outstanding material deficiencies in the Deliverable, the State shall nevertheless grant Final Acceptance of the Project.

### **2.260 Ownership**

#### **2.261 OWNERSHIP OF WORK PRODUCT BY STATE**

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

#### **2.262 RESERVED - VESTING OF RIGHTS**

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

The State is the owner of all data made available by the State to the Contractor or its agents, Subcontractors or representatives under the Contract. The Contractor will not use the State's data for any purpose other than providing the Services, nor will any part of the State's data be disclosed, sold, assigned, leased or otherwise disposed of to the general public or to specific third parties or commercially exploited by or on behalf of the Contractor. No employees of the Contractor, other than those on a strictly need-to-know basis, have access to the State's data. Contractor will not possess or assert any lien or other right against the



State's data. Without limiting the generality of this Section, the Contractor must only use personally identifiable information as strictly necessary to provide the Services and must disclose the information only to its employees who have a strict need-to-know the information. The Contractor must comply at all times with all laws and regulations applicable to the personally identifiable information.

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

## **2.264 OWNERSHIP OF MATERIALS**

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

### **2.270 State Standards**

## **2.271 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**

## **2.281 MIDEAL (MICHIGAN DELIVERY EXTENDED AGREEMENTS LOCALLY**

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

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

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

## **2.282 STATE EMPLOYEE PURCHASES**

The State allows State employees to purchase from this Contract. Unless otherwise stated, it is the responsibility of the Contractor to ensure that the State employee is an authorized purchaser before extending the Contract pricing.



The Contractor will supply Contract Services and Deliverables at the established State of Michigan contract prices and terms to the extent applicable and where available. The Contractor shall send its invoices to and pay the State employee on a direct and individual basis.

To the extent that authorized State employees purchase quantities of Services or Deliverables under this Contract, the quantities of Services and/or Deliverables purchased will be included in determining the appropriate rate wherever tiered pricing based on quantity is provided.

### 2.290 Environmental Provision

#### 2.291 ENVIRONMENTAL PROVISION

**Energy Efficiency Purchasing Policy:** The State seeks wherever possible to purchase energy efficient products. This includes giving preference to U.S. Environmental Protection Agency (EPA) certified 'Energy Star' products for any category of products for which EPA has established Energy Star certification. For other purchases, the State may include energy efficiency as one of the priority factors to consider when choosing among comparable products.

**Environmental Purchasing Policy:** The State of Michigan is committed to encouraging the use of products and services that impact the environment less than competing products. The State is accomplishing this by including environmental considerations in purchasing decisions, while remaining fiscally responsible, to promote practices that improve worker health, conserve natural resources, and prevent pollution. Environmental components that are to be considered include: recycled content and recyclables; energy efficiency; and the presence of undesirable materials in the products, especially those toxic chemicals which are persistent and bioaccumulative. The Contractor should be able to supply products containing recycled and environmentally preferable materials that meet performance requirements and is encouraged to offer such products throughout the duration of this Contract. Information on any relevant third party certification (such as Green Seal, Energy Star, etc.) should also be provided.

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

- (a) The Contractor shall use, handle, store, dispose of, process, transport and transfer any material considered a Hazardous Material according to all federal, State and local laws. The State shall provide a safe and suitable environment for performance of Contractor's Work. Before the commencement of Work, the State shall advise the Contractor of the presence at the work site of any Hazardous Material to the extent that the State is aware of the Hazardous Material. If the Contractor encounters material reasonably believed to be a Hazardous Material and which may present a substantial danger, the Contractor shall immediately stop all affected Work, notify the State in writing about the conditions encountered, and take appropriate health and safety precautions.
- (b) Upon receipt of a written notice, the State will investigate the conditions. If (a) the material is a Hazardous Material that may present a substantial danger, and (b) the Hazardous Material was not brought to the site by the Contractor, or does not result in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Materials, the State shall order a suspension of Work in writing. The State shall proceed to have the Hazardous Material removed or rendered harmless. In the alternative, the State shall terminate the affected Work for the State's convenience.
- (c) Once the Hazardous Material has been removed or rendered harmless by the State, the Contractor shall resume Work as directed in writing by the State. Any determination by the Michigan Department of Community Health or the Michigan Department of Environmental Quality that the Hazardous Material has either been removed or rendered harmless is binding upon the State and Contractor for the purposes of resuming the Work. If any incident with Hazardous Material results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in a time as mutually agreed by the parties.



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

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

**Refrigeration and Air Conditioning:** The Contractor shall comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to this contract.

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

### **2.300 Deliverables**

#### **2.301 SOFTWARE**

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

#### **2.302 HARDWARE**

A list of the items of hardware the State is required to purchase for executing the Contract is attached. The list includes all hardware required to complete the Contract and make the Deliverables operable; if any additional hardware is required in order for the Deliverables to meet the requirements of this Contract, such hardware shall be provided to the State by Contractor at no additional charge (except where agreed upon and specified in a Contract Change Notice). The attachment also identifies certain items of hardware to be provided by the State.

### **2.310 Software Warranties**

#### **2.311 PERFORMANCE WARRANTY**

The Contractor represents and warrants that Deliverables, after Final Acceptance, will perform and operate in compliance with the requirements and other standards of performance contained in this Contract (including all descriptions, specifications and drawings made a part of the Contract) for a period of (90) ninety days. In the event of a breach of this warranty, Contractor will promptly correct the affected Deliverable(s) at no charge to the State.

#### **2.312 NO SURREPTITIOUS CODE WARRANTY**

The Contractor represents and warrants that no copy of licensed Software provided to the State contains or will contain any Self-Help Code or any Unauthorized Code as defined below. This warranty is referred to in this Contract as the "No Surreptitious Code Warranty."

As used in this Contract, "Self-Help Code" means any back door, time bomb, drop dead device, or other software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than the licensee of the software. Self-Help Code does not include Software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee's computer system(s) (e.g. remote access via modem) for purposes of maintenance or technical support.



As used in this Contract, "Unauthorized Code" means any virus, Trojan horse, spyware, worm or other Software routines or components designed to permit unauthorized access to disable, erase, or otherwise harm software, equipment, or data; or to perform any other such actions. The term Unauthorized Code does not include Self-Help Code. Unauthorized Code does not include Software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee's computer system(s) (e.g. remote access via modem) for purposes of maintenance or technical support.

In addition, Contractor will use up-to-date commercial virus detection software to detect and remove any viruses from any software prior to delivering it to the State.

### **2.313 CALENDAR WARRANTY**

The Contractor represents and warrants that all software for which the Contractor either sells or licenses to the State of Michigan and used by the State prior to, during or after the calendar year 2000, includes or shall include, at no added cost to the State, design and performance so the State shall not experience software abnormality and/or the generation of incorrect results from the software, due to date oriented processing, in the operation of the business of the State of Michigan.

The software design, to insure calendar year rollover compatibility, shall include, but is not limited to: data structures (databases, data files, etc.) that provide 4-digit date century; stored data that contain date century recognition, including, but not limited to, data stored in databases and hardware device internal system dates; calculations and program logic (e.g., sort algorithms, calendar generation, event recognition, and all processing actions that use or produce date values) that accommodates same century and multi-century formulas and date values; interfaces that supply data to and receive data from other systems or organizations that prevent non-compliant dates and data from entering any State system; user interfaces (i.e., screens, reports, etc.) that accurately show 4 digit years; and assurance that the year 2000 shall be correctly treated as a leap year within all calculation and calendar logic.

### **2.314 THIRD-PARTY SOFTWARE WARRANTY**

The Contractor represents and warrants that it will disclose the use or incorporation of any third-party software into the Deliverables. At the time of Delivery, the Contractor shall provide in writing the name and use of any Third-party Software, including information regarding the Contractor's authorization to include and utilize such software. The notice shall include a copy of any ownership agreement or license that authorizes the Contractor to use the Third-party Software.

### **2.315 PHYSICAL MEDIA WARRANTY**

Contractor represents and warrants that each licensed copy of the Software provided by the Contractor is free from physical defects in the media that tangibly embodies the copy. This warranty does not apply to defects discovered more than (30) thirty days after that date of Final Acceptance of the Software by the State. This warranty does not apply to defects arising from acts of Excusable Failure. If the Contractor breaches this warranty, then the State shall be entitled to replacement of the non-compliant copy by Contractor, at Contractor's expense (including shipping and handling).

### **2.320 Software Licensing**

#### **2.321 RESERVED**

#### 2.322 RESERVED

#### 2.323 RESERVED

#### **2.324 LICENSE RETAINED BY CONTRACTOR**

Contractor grants to the State a transferable license to use the Software and related documentation according to the terms and conditions of this Contract. This license may be transferred to any State of Michigan office regardless of its physical location.

The State may copy each item of Software to multiple hard drives or networks unless otherwise agreed by the parties.



The State will make and maintain no more than one archival copy of each item of Software, and each copy will contain all legends and notices and will be subject to the same conditions and restrictions as the original. The State may also make copies of the Software in the course of routine backups of hard drive(s) for the purpose of recovery of hard drive contents.

In the event that the Contractor shall, for any reason, cease to conduct business, or cease to support the Software, the State shall have the right to convert these licenses into perpetual licenses, with rights of quiet enjoyment, but subject to payment obligations not to exceed the then current rates.

**2.325 PRE-EXISTING MATERIALS FOR CUSTOM SOFTWARE DELIVERABLES**

Neither Contractor nor any of its Subcontractors shall incorporate any preexisting materials (including Standard Software) into Custom Software Deliverables or use any pre-existing materials to produce Custom Software Deliverables if such pre-existing materials will be needed by the State in order to use the Custom Software Deliverables unless (i) such pre-existing materials and their owners are identified to the State in writing and (ii) such pre-existing materials are either readily commercially available products for which Contractor or its Subcontractor, as the case may be, has obtained a license (in form and substance approved by the State) in the name of the State, or are materials that Contractor or its Subcontractor, as the case may be, has the right to license to the State and has licensed to the State on terms and conditions approved by the State prior to using such pre-existing materials to perform the Services.

**2.330 Source Code Escrow**

**2.331 DEFINITION**

“Source Code Escrow Package” shall mean:

- (a) A complete copy in machine-readable form of the source code and executable code of the Licensed Software, including any updates or new releases of the product;
- (b) A complete copy of any existing design documentation and user documentation, including any updates or revisions; and/or
- (c) Complete instructions for compiling and linking every part of the source code into executable code for purposes of enabling verification of the completeness of the source code as provided below. Such instructions shall include precise identification of all compilers, library packages, and linkers used to generate executable code.

**2.332 DELIVERY OF SOURCE CODE INTO ESCROW**

Contractor shall deliver a Source Code Escrow Package to the Escrow Agent, pursuant to the Escrow Contract, which shall be entered into on commercially reasonable terms subject to the provisions of this Contract within (30) thirty days of the execution of this Contract.

**2.333 DELIVERY OF NEW SOURCE CODE INTO ESCROW**

If at anytime during the term of this Contract, the Contractor provides a maintenance release or upgrade version of the Licensed Software, Contractor shall within ten (10) days deposit with the Escrow Agent, in accordance with the Escrow Contract, a Source Code Escrow Package for the maintenance release or upgrade version, and provide the State with notice of the delivery.

**2.334 VERIFICATION**

The State reserves the right at any time, but not more than once a year, either itself or through a third party contractor, upon thirty (30) days written notice, to seek verification of the Source Code Escrow Package.

**2.335 ESCROW FEES**

The Contractor will pay all fees and expenses charged by the Escrow Agent.

**2.336 RELEASE EVENTS**

The Source Code Escrow Package may be released from escrow to the State, temporarily or permanently, upon the occurrence of one or more of the following:

- (a) The Contractor becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under bankruptcy or insolvency law, whether domestic or foreign;



- (b) The Contractor has wound up or liquidated its business voluntarily or otherwise and the State has reason to believe that such events will cause the Contractor to fail to meet its warranties and maintenance obligations in the foreseeable future;
- (c) The Contractor voluntarily or otherwise discontinues support of the provided products or fails to support the products in accordance with its maintenance obligations and warranties.

**2.337 RELEASE EVENT PROCEDURES**

If the State desires to obtain the Source Code Escrow Package from the Escrow Agent upon the occurrence of an Event in this **Section**, then:

- (a) The State shall comply with all procedures in the Escrow Contract;
- (b) The State shall maintain all materials and information comprising the Source Code Escrow Package in confidence in accordance with this Contract;
- (c) If the release is a temporary one, then the State shall promptly return all released materials to Contractor when the circumstances leading to the release are no longer in effect.

**2.338 LICENSE**

Upon release from the Escrow Agent pursuant to an event described in this **Section**, the Contractor automatically grants the State a non-exclusive, irrevocable license to use, reproduce, modify, maintain, support, update, have made, and create Derivative Works. Further, the State shall have the right to use the Source Code Escrow Package in order to maintain and support the Licensed Software so that it can be used by the State as set forth in this Contract.

**2.339 RESERVED - DERIVATIVE WORKS**



**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.



## **Exhibit 1 - Office of Enterprise Security Document**

STATE OF MICHIGAN



### Security Standards

The Office of Enterprise Security mission is to ensure that the appropriate level of security is implemented and maintained in order to protect the integrity of the State of Michigan government computing resources and information. Through security awareness, education, incident response, and the enforcement of State policies and procedures, we instill and maintain the confidence and trust of State of Michigan staff and customers. As part of this project the OES office will be an integral part of the review committee and will take pro-active steps to ensure the solution is secure for the SOM and it's users.

The best practices would include:

- Microsoft's Guidelines for developing secure applications
- NIST 800 series guidelines located at <http://csrc.nist.gov/publications/nistpubs/> especially 800-64, -53
- Michigan State Standards
- COBIT Audit Standards

### Security Architecture

In order to protect SOM assets to the fullest extent possible, multi-layered and highly extensible security architecture has been designed. This architecture seeks to utilize the absolute "best of breed" security products, devices and tools, combined with careful planning and policy-making, across the entire State of Michigan enterprise. In addition to utilizing the best products and tools for each situation, an overall design/implementation strategy has been developed to further enhance the security of State of Michigan data and resources. By utilizing risk analysis, security policy creation, applications and data sources can be protected based upon sensitivity levels assigned to them. According to this methodology, each data source or application to be made available in the e-Government initiative is to be evaluated based upon its sensitivity, attractiveness to intruders, and dependencies. Based upon this evaluation, the data source can be given a security rating that corresponds to a predefined level of protection that must be provided for that class of information. These different "levels" of protection will be constructed with the information at stake in mind, they will be composed of different combinations of security devices, tools and configurations designed to guard the data source from theft or attack in the most up to date and effective manner possible at all times.

Contractor will be required upon Contract award to develop a security threat matrix that includes a complete security plan with disaster recovery, business continuity plan, change management, and identify all controls for Confidentiality, Integrity, and Availability.



EXHIBIT 1  
Enterprise Security POLICY 1350.00

POLICY 1350.00

Issued Date: August 8, 2001

Effective Date: August 20, 2001

Executive Branch departments, boards, commissions or agencies and sub-units shall comply with the standards and guidelines set forth under this Enterprise Security Policy. These standards cover all aspects of security for platforms, networks, and

physical access to information technology support facilities. Practical business risk methodologies will guide technical security infrastructure decisions and determine the degree to which a risk should be mitigated or accepted. Departments will be required

to report their current status in areas where compliance with the State standard is essential to the well being of State information technology resources. To further strengthen the protection of information technology assets, the State will assess events occurring within the State's information technology environment and take actions deemed appropriate to protect the integrity of the Enterprise. The goal of an enterprise security framework of standards established under this policy is to ensure:

- Individual Confidentiality and Privacy – ensure information classified as protected by law or having the potential of being personal identifying information is processed in ways to prevent unauthorized access to the extent permitted by current technology.
- System Integrity – information is protected from tampering and unauthorized modification while in route and residing within the State's controlled infrastructure.
- Application Availability – authorized users of information technology resources can access appropriate resources in a timely manner. Procedures and standards resulting from this Enterprise Security Policy will address and support the security functions of:
  - Authentication – certainty of source.
  - Authorization – granting of rights and privileges.
  - Administration – security management.
  - Auditing – enforcement and reporting.

The standards described in this section are the minimum level of protection that will be implemented across the Enterprise. State Departments desiring to implement more stringent procedures for their information technology environments may do so with the approval of Enterprise Security.

Contractor & Contractor Payees must follow Statement on Auditing Standards (SAS) No. 70, auditing standard.

SAS No. 70 is the authoritative guidance that allows service organizations to disclose their control activities and processes to their customers and their customers' auditors in a uniform reporting format. A SAS 70 examination signifies that a service organization has had its control objectives and control activities examined by an independent accounting and auditing firm. A formal report including the auditor's opinion ("Service Auditor's Report") is issued to the service organization at the conclusion of a SAS 70 examination.

Contractor & Contractor Payees must use ISO 17799 as a baseline or framework for the information security function, to assist in identifying the controls that have been placed into operation.

ISO 17799 is intended to provide a single reference point for the wide range of controls needed for most situations where information technology is used in industry, commerce, and communication. This detailed security standard is divided into 10 key sections:

i. Information Security	ii. Computer and Network
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Policy	Management
2. Security Organization	7. System Access Control
iii. Asset Classification and Control	iv. Systems Development and Maintenance
4. Personnel Security	v. Business Continuity Planning
5. Physical and Environmental Security	10. Compliance

A COBIT (or equivalent) process of controlled migration of the configuration, through development, test and production environments while maintaining separation of duties is preferred. A process which may be perpetuated by the technical administration staff after the system has been delivered is preferred. At no time shall developers have administrative access to test or production environments.

**Risk Management**

A risk is an unknown circumstance or event that, if it occurs, may have a positive or negative impact on the project.

The Contractor is responsible for establishing a risk management plan and process, including the identification and recording of risk items, prioritization of risks, definition of mitigation strategies, monitoring of risk items, and periodic risk assessment reviews with the State.

A risk management plan format shall be submitted to the State for approval within twenty (30) business days after the effective date of the contract resulting from the upcoming RFP. The risk management plan will be developed during the initial planning phase of the project, and be in accordance with the State's PMM methodology. Once both parties have agreed to the format of the plan, it shall become the standard to follow for the duration of the contract. The plan must be updated bi-weekly, or as agreed upon.

The Contractor shall provide the tool to track risks. The Contractor will work with the State and allow input into the prioritization of risks.

The Contractor is responsible for identification of risks for each phase of the project. Mitigating and/or eliminating assigned risks will be the responsibility of the Contractor. The State will assume the same responsibility for risks assigned to them.

**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/0,1607,7-179-25781-73760--,00.html>. 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.

**Background Checks**

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

All Contractor personnel will also be expected to comply with the State's security and acceptable use policies for State IT equipment and resources. See <http://www.michigan.gov/ditservice/0,1607,7-179-25781-73760--,00.html>. Furthermore, Contractor personnel will be expected to agree to the State's security and acceptable



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

#### Protection of Confidential Information

The State and Contractor will each use at least the same degree of care to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication or dissemination of its own confidential information of like character, but in no event less than reasonable care. Neither Contractor nor the State will (i) make any use of the Confidential Information of the other except as contemplated by this Contract, (ii) acquire any right in or assert any lien against the Confidential Information of the other, or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information to the other party. Each party will limit disclosure of the other party's Confidential Information to employees and Subcontractors who must have access in order 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) such disclosure is necessary or otherwise naturally occurs in connection with work that is within such 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 such Confidential Information from unauthorized use or disclosure.

#### Security Breach Notification

In the event of a breach of this Section, Contractor shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor shall 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 ten (10) days of becoming aware of such use or disclosure or such shorter time period as is reasonable under the circumstances.

#### Rights in Data

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

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

#### Disaster Recovery

Contractor and the State recognize that the State provides essential services in times of natural or man-made disasters. Therefore, except as so mandated by Federal disaster response requirements, Contractor



personnel dedicated to providing Services/Deliverables under this Contract will provide the State with priority service for repair and work around in the event of a natural or manmade disaster.

Contractor Hosted Option provide a detailed description of the following;

- ◇ A complete description of the proposed web-hosting center/data center, including geographic location(s) and all relevant environmental factors such as power, HVAC, floor space, proposed layout, user accessibility, network configuration and level of redundancy and security.
- ◇ A description of the Contractor's experience with hosting sites similar to that which is being acquired through this procurement.
- ◇ References of current customers with hosting requirements similar to those of the State.
- ◇ A description of the service offerings provided by the Contractor at the web hosting facility. This should include: the use of dedicated and/or shared servers, platforms supported, available software offerings, available storage space, information pertaining to monthly data transmission allowances (if applicable), reliability and performance boosting efforts (e.g., caching, mirroring, and load balancing), and the range of services available (including application management, system integration, benchmarking, high-availability configurations, and disaster recovery).
- ◇ Describe in detail the nature of the Contractor's underlying transport network (or networks) to be employed in enabling the solution. Such a description should include size of network, transport protocol employed, security scheme for the network, general network topology (including internet connectivity), etc.
- ◇ Description of support that is available for SSL security, database connections.
- ◇ Details about the hours of operation at the Contractor's outsourcing locations.
- ◇ Staffing numbers and expertise per location, strategy for new staff hiring, and staff retention programs.
- ◇ Contractors should discuss their approach for addressing security relative to network layer controls, platform controls and application controls. The discussion should also cover the Contractor's support for advanced security technologies such as managed firewalls, encryption, authentication, intrusion detection, site scanning, server hardening, and the performance of security audits/penetration tests. Contractors should also describe their documented policies and procedures for dealing with security issues on an on-going basis. A description of the advanced security options used at the facility such as managed firewalls, encryption, authentication, intrusion detection, and site scanning.
- ◇ Contractors should provide information regarding disaster recovery strategies, prototyping and pilot testing, performance monitoring and problem resolution, knowledge transfer to State employees and exit strategies.
- ◇ Contractors should provide information regarding their recommendation of a development and testing environment.
- ◇ Describe in detail how you will manage the source code.
- ◇ Describe in detail how your solution aligns with DTMB Standards.
- ◇ Contractor to provide load testing services to validate architecture, based on State requirements.
- ◇ Contractor to provide Specific test plan needs.
- ◇ Contractor to describe back up schedules for all system components.
- ◇ Contractor to describe how software updates will be handled for all components.
- ◇ Contractor to describe how system monitoring and maintenance will be handled.
- ◇ Contractor to describe how the change control process will be managed.
- ◇ Contractor to describe how they can provide an archived back-up of data for up to 7 years.
- Contractors proposing a subcontracted or partially subcontracted hosting option are asked to provide samples of SLAs used with current customers. Identifying information related to the customer may be blocked from the samples to ensure confidentiality .

# IntelliGrants™ License Agreement

## Attachment 1 – IntelliGrants™ License and Service Level Agreement

This Agreement, effective as of April 1, 2010, is made by and between Agate Software, Inc. ("Licensor"), a Michigan corporation, located at 2214 University Park Dr., Suite 102, Okemos, Michigan 48864 and the State of Michigan ("Licensee").

NOW THEREFORE, in consideration of the mutual promises set forth below, Licensor and Licensee agree as follows:

### 1. License Grant

a. Grant. (1) Licensor grants to Licensee, on the terms and conditions of this Agreement, a non-exclusive license for use, solely by the State of Michigan of the Licensor software and user documentation (collectively "Products"). The Products are licensed, not sold. The license is not transferable except as provided herein. Licensor reserves all other rights not expressly granted in this Agreement.

(2) Further, Licensor grants to Licensee, on the terms and conditions of this Agreement, a non-exclusive, non-transferable license to use and further modify, revise and enhance the custom modifications made under this Agreement including but not limited to the executable modules, reports, source code files and any other related components of the custom modifications made under this Agreement.

b. Scope of License. The Products will be provided by Licensor as web applications, which will include a collection of files for installation on a web server and one database per application for installation on a database server. Licensee may not make any copies unless Licensee has paid the applicable fees. Products for which Third Party Software Requirements are specified in Appendix A are limited to use with those Third Party Software Requirements, and Licensee is responsible for obtaining any required licenses. If Products are to be used outside of the United States, Licensee must comply with the Export Restrictions set forth in Section 12.

c. Assignment. Licensee may assign its rights under this Agreement to any other legal entity provided such assignment is pursuant to the sale of all or the majority of Licensee's assets, or pursuant to a merger, consolidation, or other reorganization. Licensee shall provide Licensor with written notice of such intended

assignment no later than sixty (60) days prior to the intended date of assignment. Any permitted assignee must agree in writing to be bound by the terms and conditions of the Agreement as a licensee and must forward that writing to Licensor, as a condition of a valid assignment. In no event may Licensee assign or transfer any of its rights under this Agreement to any direct competitor of Licensor, or to any other third party except as permitted in this section. Any unauthorized assignment, sublicense, or other transfer by Licensee of this Agreement or the Products shall be void and shall be a material breach of this Agreement.

- d. Internal Use. Licensee may use the Products only to process Licensee's own data and only for Licensee's internal operations. Licensee may not use the Products to offer timesharing or other computer based services to third parties, and may not sublicense, assign or otherwise permit use of the Products by third parties other than as permitted in this Agreement.

## 2. Term and Termination

The license term starts on the Effective Date of this Agreement and continues for a perpetual term unless terminated earlier in accordance with this Section. Licensor may terminate Licensee's license only in the event of a material breach by Licensee of this Agreement or the State of Michigan Contract between the parties to which this Agreement is an attachment that is not cured within thirty (30) days after the giving of notice by Licensor. However, only one (1) day notice will be required in the event of infringement of Licensor's proprietary rights. Upon termination for any reason, Licensee agrees to stop all use of the Products, destroy all copies and certify their destruction to Licensor.

## 3. Pricing and Payment

For each Annual Support renewal period and for any other services provided hereunder, Licensee shall pay as invoiced at then-current prices, terms and conditions.

## 4. Support

- a. Support Services. Annual Support includes telephone and e-mail support for questions on the operation of the Products, as well as minor upgrades and patches for the Products. On-site support at any time during the term of this Agreement is subject to Licensor's then-current prices, terms, and conditions. All support is provided on a reasonable efforts basis only, and Licensee acknowledges that Licensor may not be able to resolve every support request. Support services can only be provided if the Product is in use with such Third Party Software Requirements as are specified in Appendix A. Any software patches, documentation, or other items provided as a part of the support services are solely owned by Licensor and will automatically be licensed to Licensee under this Agreement. Licensor will consult with the Licensee about any possible

incompatibilities between the minor upgrades and patches and the customizations of the product and receive written approval from the Licensee BEFORE such patches and minor upgrades are applied. Licensor shall have the right to charge additional reasonable fees if Licensor spends time investigating or fixing a problem for Licensee that is not caused by a current standard release of a Product licensed to Licensee.

b. Annual Support Renewal Periods. Per section 5a below, the enterprise software license will be provided at no charge to the State.

5. Installation, Customization, Data Conversion, and Training Services, and Work Products

a. Any work products produced for Licensee as part of Installation, Customization, Data Conversion or Training Services will become Products licensed under this Agreement and are solely owned by Licensor. Licensor will provide Licensee with permanent (perpetual, irrevocable) enterprise software license at no charge under the terms and conditions of this Agreement in order to maintain ownership of work products.

b. Unless the parties enter into a separate written agreement with respect to Installation, Customization, Data Conversion and Training Services, those services will be performed under the terms and conditions of this Agreement.

i) Installation. In order for Licensor to install the Products, Licensee will let Licensor use Licensee's system and equipment necessary for installation and testing. Licensee will provide such Third Party Software as is specified in Appendix A.

ii) Customization. All customizations are documented in Appendix D.

iii) Data Conversion. Licensee is solely responsible for conversion of its data into the database format required by the Products; however if data conversion services are included in Appendix D, Licensor will provide services for conversion of Licensee's data from any reasonable form to the database format required by the Products.

iv) Training. Training will be provided on-site at Licensee's facility using Licensee's equipment. Training can be customized upon request of Licensee to meet Licensee requirements.

6. Limited Warranty and Remedy

Licensor warrants that it has the right to grant Licensee this license. Licensor further warrants that the first release of each Product installed by Licensor for Licensee will for one year after the date of installation by Licensor perform

substantially in accordance with Licensor's then current user documentation. Any unauthorized modifications made to Products by or on behalf of Licensee, or use other than with such Third Party Software Requirements as are specified in Appendix A., invalidates this warranty. Licensor makes no warranty and assumes no responsibility for any third party software licensed to or hardware acquired by Licensee or for any modifications, revisions or enhancements of the Products made by or on behalf of Licensee. Licensor does not warrant that the operation of the Products will be uninterrupted or error-free, or that all errors discovered in the Products can or will be corrected.

**LICENSOR'S SOLE OBLIGATION AND LICENSEE'S EXCLUSIVE REMEDY FOR ANY WARRANTY FAILURE UNDER THIS AGREEMENT IS, AT LICENSOR'S OPTION, THE CORRECTION OR REPLACEMENT OF THE NONCONFORMING PRODUCTS OR ALTERNATIVELY, REFUND OF THE INITIAL LICENSE FEE AS STATED ON APPENDIX C.**

#### 7. Warranty Disclaimer

**THE WARRANTIES CONTAINED IN THIS AGREEMENT ARE EXCLUSIVE. THEY ARE IN LIEU OF AND LICENSOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE.**

#### 8. Patents and Copyrights

Licensor will defend with the approval of the Attorney General's Office, and indemnify Licensee, at Licensor's expense, against any claim or suit against Licensee based on an alleged violation of a United States patent or copyright that arises out of Licensee's use of the Products as installed by Licensor and in accordance with this Agreement, and Licensor will pay all costs, settlements, or judgment finally awarded, provided (i) Licensee gives Licensor prompt written notice of any claim; (ii) Licensor has the right to control the defense of the litigation; and (iii) Licensee takes such actions as Licensor may reasonably request at Licensor's expense. If a judgment is obtained against Licensee's use of any part of the Products, or if Licensor believes that there is a likelihood of a claim of infringement, Licensor shall, at Licensor's option and expense: (i) modify or substitute the affected Products (but provide Licensee with substantially the same functionality); (ii) obtain the rights to continue use; or (iii) terminate the license and take back the affected Products. In the event of such termination, Licensor will refund the license fees paid for the affected Products, less a reasonable charge for use to the date of termination. In the event the claim or liability could be avoided by the use of a current release, Licensor will provide Licensee with a copy of the current

release at no extra charge. Licensor will have no obligation to defend and indemnify Licensee to the extent any claim or liability is based upon: (i) Licensee's continued use of a non-current release of Products, if Licensee has received notice of a claim and a current release has been supplied to Licensee; (ii) modifications, revisions or enhancements to the Products made by or on behalf of Licensee; (iii) work performed to Licensee's specifications; or (iv) use of software not supplied by Licensor but used in combination with the Products. The terms of this Paragraph do not apply to intellectual property licensed or otherwise provided by Licensee to Licensor in order for the purposes of this Agreement to be accomplished. **THIS PARAGRAPH STATES LICENSOR'S ENTIRE LIABILITY FOR PATENT AND COPYRIGHT INFRINGEMENT.**

9. Limitation of Liability

a. **Limitation.** EXCEPT AS OTHERWISE PROVIDED IN SECTION 8, "PATENTS AND COPYRIGHTS," LICENSOR SHALL HAVE NO LIABILITY FOR THIRD PARTY CLAIMS, AND LICENSOR'S LIABILITY AND THAT OF ITS AGENTS, REPRESENTATIVES AND EMPLOYEES TO LICENSEE FOR DAMAGES WITH RESPECT TO THIS AGREEMENT, PRODUCTS, OR OTHER ITEMS OR SERVICES SHALL NOT EXCEED IN THE AGGREGATE THE LICENSE FEES PAID UNDER THIS AGREEMENT. IN NO EVENT SHALL LICENSOR HAVE ANY LIABILITY FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR SPECIAL DAMAGES INCLUDING, WITHOUT LIMITATION, LOST DATA, REVENUES, OR PROFITS, EVEN IF IT HAS BEEN ADVISED ABOUT THE POSSIBILITY OF THE SAME. THE LIMITATIONS AND EXCLUSIONS IN THIS PARAGRAPH SHALL APPLY TO ALL CLAIMS OF EVERY NATURE, WHETHER ARISING FROM CONTRACT, NEGLIGENCE OR OTHER TORT, OR OTHERWISE. DAMAGES AS LIMITED BY THIS PARAGRAPH IS LICENSEE'S SOLE AND EXCLUSIVE ALTERNATIVE REMEDY IN THE EVENT THAT ANY OTHER REMEDY PROVIDED IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE.

b. **Force Majeure.** Licensor will not be responsible for any delay or failure in performance caused by acts of God, any government or any other cause beyond Licensor's reasonable control.

c. **Licensee Responsibility.** Licensee is solely responsible for selecting and using Products and services to meet Licensee's needs and for establishing reasonable backups, accuracy checks, and security precautions to guard against possible malfunctions, loss of data, or unauthorized access. Licensee shall not modify, revise or enhance the Products other than as provided herein, or permit modification, revision or enhancement by third parties.

#### 10. Ownership and Confidentiality

Licensor reserves all rights with respect to the Products under all applicable laws and treaties for the protection of intellectual property, and retains sole ownership of all right, title and interest, including but not limited to patent, copyright, trademark and trade secret rights in the Products, including work products that are the result of Installation, Training, Customization and Data Conversion Services. Licensee agrees that the Products constitute valuable confidential and proprietary products and trade secrets of Licensor. Licensee retains sole ownership of all of its data input into the Products. Likewise Licensee retains sole ownership of any of its copyrighted works provided to Licensor and hereby grants permission to Licensor to create such derivative works as are necessary in order for the purposes of this Agreement to be accomplished. Licensee agrees to take reasonable security precautions to prevent disclosure of Products to third parties and to protect and maintain confidentiality of the Products. Licensor will have the same confidentiality obligations for any specific confidential information Licensee supplies to Licensor, provided Licensee indicates in writing that the information is confidential at the time of disclosure.

Licensee agrees that it shall maintain the copyright and other proprietary rights notices that appear on and in the Products, and that it shall not make any copies or any use of the Products except as expressly set forth in this Agreement; cause or permit unauthorized access, use, copying, reproduction, disclosure, transfer, delivery or distribution by any means of all or any part of any Product; attempt to disassemble, reverse engineer, decompile, translate, modify, or discover the source code of any Product; separate components for use on more than one CPU; or merge all or any part of any Product with another program.

The parties agree that in the event of breach by Licensee of the provisions of this section, in addition to any other remedy the Licensor shall be entitled to seek a temporary restraining order or preliminary injunction from a court of competent jurisdiction to prevent Licensee from engaging in any further unauthorized use or disclosure of the Products.

Licensee may copy the Software in machine readable form for backup and archival purposes only as necessary to support Licensee's internal use of the Software with the Equipment on which use is licensed.

#### 11. General

All Forms and Appendices are incorporated into and made a part of this Agreement by this reference. This Agreement shall be governed by and construed under the laws of the State of Michigan, exclusive of its choice of law rules. Licensee agrees to sole jurisdiction and venue in any Federal or state court in the State of Michigan. This Agreement, including its Forms and Appendices, contains the full understanding of the parties and supersedes all

other proposals, understandings, samples, models, agreements, warranties, representations, or conditions, written or oral, regarding its subject matter. This Agreement may be amended, modified or waived only in writing signed by the authorized representatives of both parties. Sections 6 through 12 shall survive termination of this Agreement.

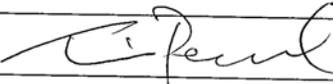
Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent. All notices shall be by personal delivery, by U.S. mail postage prepaid, by Federal Express or similar national delivery service, or by facsimile. Notices to Licensee shall be sent to Licensee's billing address. Notices to Licensor shall be sent to Licensor at the address first given in this Agreement. No waiver of any provision of this Agreement will be deemed a waiver of any other provision or of any subsequent breach or default of the same provision of this Agreement. If any provision of this Agreement is declared by a Court of competent jurisdiction to be invalid, illegal or unenforceable, then that provision shall be severed from the Agreement and the remaining provisions shall remain in full force and effect.

#### 12. Export Restrictions

Products are subject to U.S. export control laws, including the U.S. Export Administration Act and Regulations, and may be subject to export or import regulations in other countries. Licensee agrees to comply fully with all export and import control laws and regulations of the United States and any other applicable country, including end-user, end-use and country destination restrictions.

THE ABOVE TERMS AND CONDITIONS ARE AGREED TO AND ACCEPTED by the parties each through its duly authorized representative.

(Please sign and return two copies. This agreement, any amendments and all future orders are subject to written acceptance at Licensor Headquarters in the State of Michigan.)

LICENSEE:	LICENSOR:
State of Michigan	Agate Software, Inc.
By:	By: 
Name:	Name: Tim Pearl
Title:	Title: President
Dated:	Dated: 6-28-10

## APPENDIX A

### Third-Party Software Requirements

Licensee shall acquire licenses for its use of the following third-party software. Licensee's entire rights and obligations with regard to the third-party software are subject exclusively to the terms and conditions of those licenses:

Third-party software includes but is not limited to the following:

- Microsoft SQL Server 2005 or 2008
- Microsoft .Net Framework 3.5 SP1
- Microsoft Chart
- Crystal Reports Version 10.5 or higher

**Appendix B**

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**Appendix C – IntelliGrants Order Form**

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## **Appendix D – Customizations**

Mutually agreed upon customizations and data conversion services are documented in MEGS NET Gap Analysis 20100118.

**Addendum A to IntelliGrants™ License Agreement**  
with effective date April 1, 2010

The terms and conditions in the State of Michigan Contact No. 071B1001472 shall take precedence over any conflicting contract language contained in the IntelliGrants™ License Agreement to which this Addendum is attached.

THE ABOVE TERMS AND CONDITIONS ARE AGREED TO AND ACCEPTED by the parties each through its duly authorized representative.

LICENSEE:	LICENSOR:
State of Michigan	Agate Software, Inc.
By: <i>Steve Motz</i>	By: <i>Tim Pearl</i>
Name: STEVE MOTZ	Name: Tim Pearl
Title: DTMB BUYER	Title: President
Dated: 7/6/2010	Dated: 6-28-10

## SERVICE LEVEL AGREEMENT

### Purpose and Objectives

This Agreement is made wherein Agate Software, Inc. (Firm) agrees to provide <CLIENT NAME> (Client) a Service and Support Level Agreement (SLA) to support the Client's implementation and ongoing utilization of the Firm's IntelliGrants system, a Commercial Off The Shelf (COTS) grants management solution. The purpose of the SLA is to identify current and projected level and qualifications of support staff, and software components including systems support service levels with the responsibilities and response times between the Firm and the Client for change management, problem identification and resolution, break/fix, back-up/recovery, help-desk, system enhancements, development, system configuration. These are defined in detail throughout this document.

This Service and Support Level Specification Agreement will remain valid as long as the Terms and Conditions of the IntelliGrants™ License Agreement are valid. The services and support outlined in the Service & Support Level Specification Agreement are considered terminated with the termination of the IntelliGrants™ License Agreement.

### Definitions

**IntelliGrants** means Agate Software, Inc.'s proprietary COTS grant management software.

**COTS** means Commercial Off The Shelf

**Key personnel** means any person employed by the Firm who has a key role in the delivery of the services to the Client

**Change Management** means the agreed process to be followed when software or hardware changes are required to IntelliGrants

**Defective or inadequate performance** means the delivery of services where the performance levels do not meet an agreed minimum criteria

**Hardware** means any and all hardware operated or installed by the Firm to implement the system for the benefit of the Client

**Help Desk services** mean the specified support services provided to the Client to facilitate understanding in operating and executing the delivered Services

**Push** means updating changes to data made in the development environment to demonstration environment or updating data changes after testing is completed from demonstration to production environments

**Problem escalation** means the agreed procedure for alerting and notifying increasingly senior members of the Firm to resolve problems

**Problem management** means the agreed procedures for providing support and problem resolution services to the Client

**Service availability** means the times and periods that the Firm will make their services available to the Client

**Service review meetings** mean regular meetings that are held between representatives of the Firm and the Client specifically to discuss issues arising from the delivery of the Services including the performance of the Service delivery

**Software problem** means an unexpected system outcome resulting from an action within the product and the expected result documented in project documentations, system documents and/or user manuals

**Software change request** means new system design to support business requirements not currently supported by system functionality

**Standard services** mean those Services that the Firm delivers to its Clients

**System** means Agate Software's IntelliGrants™ online grant management system

## **SCOPE OF WORK**

### **Standard Services**

Standard services to be delivered under this Agreement are set forth in SCHEDULE A – STANDARD SERVICES.

### **Service Availability**

The availability and response times of the services to be delivered are set forth in SCHEDULE B – SERVICE AVAILABILITY.

### **Changes to Services**

Change control procedures are set forth in SCHEDULE C – CHANGE MANAGEMENT

## **PERFORMANCE, TRACKING AND REPORTING**

### **Key Personnel Changes**

The Firm will notify the Client at least three (3) business days in advance of changes to any key Firm personnel that could potentially affect the delivery of services to the Client.

### **Service Levels and Performance**

The methodology to be used to monitor service delivery is set forth in SCHEDULE D – SERVICE LEVELS AND PERFORMANCE STANDARDS

### **Service Review Meetings**

Service review meetings to discuss such items as service performance levels, system issues, proposed design changes and administrative issues will be held on an as-needed-basis with the Firm and the Client, but no less frequently than monthly when there are open work orders; otherwise at least quarterly.

## **PROBLEM MANAGEMENT**

### **Annual Support and Help Desk Services**

Support and Help Desk services are set forth in SCHEDULE E – ANNUAL SUPPORT & HELP DESK SERVICES

**Problem Escalation**

To ensure timely problem resolution, a problem escalation procedure is set forth in SCHEDULE F – PROBLEM ESCALATION

## CLIENT DUTIES AND RESPONSIBILITIES

### Client Personnel, Facilities and Resources

The Client will ensure that the Firm has timely access to appropriate the Client personnel and will arrange for the Firm's personnel to have suitable and safe access to the Client's facilities and systems (as needed), including suitable on-site office space and associated resources. Management of off-site hardware and software will be the responsibility of the Firm. Additional responsibilities of both parties are included in the schedules, which are part of this Agreement.

IN WITNESS WHEREOF, the parties have executed and entered into this

Agreement on this date, the \_\_\_\_\_ day of \_\_\_\_\_, 2010.

Agate Software, Inc.

By: \_\_\_\_\_

Tim Pearl, President

<Client Name>

By: \_\_\_\_\_

[Client Signatory Name, Title]

## SCHEDULES

- Schedule A**      Standard Services
- Schedule B**      Service Availability
- Schedule C**      Change Management
- Schedule D**      Service Level and Performance Standards

**Schedule E**      Annual Support & Help Desk Services

**Schedule F**      Problem Escalation

**Schedule G**      Change Request Form

## **SCHEDULE A – STANDARD SERVICES**

Schedule A provides a detailed list of the standard services that are available under the terms of this Agreement. The client responsibilities are also identified to achieve these services.

The Client owns and shall maintain exclusive control over all of its data stored in the IntelliGrants Solution. The Firm has no rights to the Client data, but may gain access as needed to meet the needs of the Service and by complying with established Open Record Request procedures directed to the Client Public Information Officer.

### Standard Services

- The Firm shall provide technical and operational support for the following processes:
  - Annual Support
  - Telephone and email support on the operation of IntelliGrants
    - Minor product upgrades
    - IntelliGrants bug fixes
    - Third party patches as appropriate
  - Change requests per the Change Management procedure
- The Firm shall maintain and manage a Help Desk to support the user population at the Client and its designated contractors. Hours of operation are defined in Schedule B.
- The Firm shall provide the necessary staff and expertise to operate and upgrade the system hardware and software
- The Firm will maintain core development of application fixes and enhancements to the software
- It is the responsibility of the Client to provide specifications for software problems and other requests to the Firm that includes the appropriate level of information to communicate all system functional requirements
- The Firm's staff will provide support, based on mutually agreed upon timeline scope and budget, to aid the Client in performing business requirements analysis and assisting in the specifications documentation of requested design changes or development

Upon the Client's approval and the Firm's approval, the Firm will develop and test software problem fix/changes made to the system

- The Firm will be responsible for maintaining all system components including product upgrades, but will gain the Client's approval for the timing prior to system upgrades
- The Firm will manage, acquire and administer all third party licenses and maintenance agreements related to the system and Firm-related hardware
- The Firm will maintain hardware and network infrastructure required to provide the service, prevent and respond to service interruptions
- The Firm will maintain the current level of hardware infrastructure and backup equipment to minimize downtime to the Client and will continue to provide for such redundancy in the future when making upgrades to the system
- The Firm will jointly discuss with the Client any new database or hardware requirements identified by the Firm or any party requesting such on behalf of the Client. If a change is mutually accepted, implementation of new requirements will be jointly planned and implemented.
- Unless otherwise agreed between both parties, training is the responsibility of the Client
- The Client will provide access to necessary resources and information in a timely manner to support the Firm in completing the above goals

#### Key Personnel and Contact Information

Agate Help Desk  
1-800-820-1890  
[helpdesk@agatesoftware.com](mailto:helpdesk@agatesoftware.com)

Single Point of Contact  
Mark Epolito  
Account Manager  
[mepolito@agatesoftware.com](mailto:mepolito@agatesoftware.com)  
517-336-2511

## **SCHEDULE B – SERVICE AVAILABILITY**

Schedule B provides a list of the times and periods when the services will be available to the Client under the terms of this Agreement.

Access to the system should be available at all times except when essential maintenance to hardware or software is required. If it becomes necessary to interrupt service during prime business hours, prior notification to and approval from the Client is required unless the situation

is critical in nature and could cause more damage if not handled immediately. As much as possible, interruptions will be scheduled to minimize any impact on users.

### **Help Desk Availability**

**Help desk support is available (8:00 am - 8:00 pm EST, Mon. – Fri.) and can be contacted by e-mail or a toll-free number.**

### **Scheduled System Downtime**

- Scheduled downtime will be conducted outside prime business hours. Prime business hours are defined as 8 am – 5 pm EST.
- While not a norm, downtime outside the scheduled windows may be necessary. In these instances, the Firm will communicate such cases within a five (5) day advance communication to the Client Management, unless the maintenance is deemed critical to system stability. All mutually agreed upon down time shall occur to minimize disruption to the Client's operations.
- If the Client requires system availability during regularly scheduled maintenance windows, advance written notice from the Client is required within five (5) business days. The Firm will strive to fulfil these requests to the best of its abilities to facilitate continued business processing.
- In cases where personnel support is required during non-prime business hours, the Firm will provide support required under these situations. Unless business critical, The Client is responsible for providing the Firm adequate advance notice, i.e. a minimum of five (5) days prior notice to such event, to ensure that the Firm may properly plan and schedule staffing requirements. Note that if a critical issue continues outside normal business hours, appropriate the Firm's support staff shall continue uninterrupted until the issue is resolved.

### **Service Level and Performance Standards**

The Performance Standards, definitions and response times are outlined in Schedule D – Service Level and Performance Standards.

### **Back-Up Procedures**

- Backup database procedures are performed on a nightly and weekly basis.
  - An automatic, full back-up on a nightly basis (typically 2:00 AM EST)
  - Daily incremental digital backups will be retained for at least 30 days
  - Weekly full back-up of the entire server environment

### **System Restoration**

In the case of a major emergency or a disaster resulting in the loss of the data, the Web application or both, a system restoration will be required. The Firm will take the following steps to restore the system:

- Active PDF Installation
- IIS Setup
- Microsoft SQL Server 2005 installation and configuration
- IntelliGrants database installation
- IntelliGrants web files installation

## **SCHEDULE C – CHANGE MANAGEMENT**

Schedule C provides information on the change management procedures to be followed for client requested system changes to the System.

### **Software Design Change Requests**

- All change requests will be submitted to the Firm's project manager, preferably on the Change Request Form. A copy of the Firm's Change Request form is located in SCHEDULE G.
- The Firm's project manager will coordinate all activity related to a change request
- All change requests will go through an impact analysis
- The Client must approve changes involving additional cost and the project's timeline
- The Firm's project manager may approve changes having little or no impact to the project. The Firm's project manager will notify the Client of these approvals. The Firm's project manager will assess when the project can no longer absorb low impact requests at which point these requests will be forwarded to the Client for consideration.
- Project team members will not unilaterally commit to changes or incorporate changes into project deliverables
- The Client will not commit to any change to project deliverables before the impact of the change is quantified
- End users cannot approve change requests
- New change requests and change request status will be included in the Service Review meetings

### **Software Development Problems**

- The Client will provide the Firm ample information when reporting an issue. Examples of relevant data include the date and time the problem occurred, a detailed description of the issue in terms of impact on business processing, the process that was being performed in the system when the error occurred, system error message received and the user ID operating the system. If available a screen shot should be captured to help diagnose the issue.
- Software problems will be assigned a priority and resolved within the timeframe outlined in Schedule D of this Agreement.

- Once the Firm develops and internally tests the fix to a software problem, the Firm will push the fix to the demo environment.
- The Client has two days to verify that the fix is operating as properly, upon written authorization by the Client, the Firm will push the fix to the Production environment in the next scheduled push.
- If continued issues are found with a particular fix, the Firm will correct and re-test before the data is pushed back to the demo environment.
- If a design change or fix is rejected by the Client, the application code will be removed from the demo and development environments and will not be pushed to the production environment.

### **Client Testing Timeframe**

- It is imperative that the Client test fixes and design changes in a timely fashion. The Client will test a software problem or design change in the demo environment according to the client-specified test plan in accordance to the timeframes listed below:
  - Software problems: Two (2) business days
  - Enhancement: Three (3) business days, unless otherwise mutually agreed upon by both parties
- The Firm will not push any enhancements or problem fix to the Client's production environment without a written confirmation by the Client to the Firm
- The Firm will push fixes and/or enhancements to the system production environment no more frequently than once per week. An exception would be allowed for an emergency fix that is required by the Firm or other Clients of the Firm. Prior authorization from the Client and the Firm is required for these exceptions.

## SCHEDULE D – SERVICE LEVELS AND PERFORMANCE STANDARDS

Performance Standard	Measurement	Measurement Period	%Level
Severity Level 1	Time (hrs)	Less than 4 hrs	98 %
Severity Level 2	Time (hrs)	Less than 24 hrs	98 %
Severity Level 3	Time (days)	Less than 5 days	98 %
Severity Level 4	Time (days)	Less than 30 days	98 %
Severity Level 5	Mutually Agreed	Mutually Agreed	98 %

The following definitions provide additional content regarding the Firm's SLA Services.

### Severity Level 1 (SL1)

The highest severity is severity level (SL1). An SL1 issue is considered critical and will initially have the highest priority. The production system is down and normal business processes cannot proceed. More than 90% of the users are affected. There is no timely workaround that provides the lost functionality. The incident has one or more of the following:

- Severe business operation impact
- Examples: Inability to perform any work required to operate the business; Critical server failures that are core to business functions
- Data Corruption caused by software error or failure events. It is extremely important that data corruption be prevented
- Severe performance problems causing unreasonable waits for resources or response, or performance at a level that does not complete critical business functions

When an SL1 issue call is received, the Firm will use all available resources to address the problem as soon as possible (less than four (4) business hours).

### Severity Level 2 (SL2)

A severity level 2 (SL2) issue is classified as urgent. The system is up, but not functioning at "normal" capacity. A major function is not available and it is affecting a significant number of users. The incident causes a severe impact on business regardless of the environment. No acceptable workaround is available; however, business operations can continue in a restricted fashion. The incident has one or more of the following characteristics:

- Moderate business impact

- Examples: Performance is slow, but workload is manageable; emails are flowing internally but not externally
- Application error or erroneous results caused by internal software error
- Examples: Absence of some important functionality, but continued operation in a restricted fashion; Word and Excel load but the file can't be saved
- Severe impact to a single user
- Examples: Equipment failure or complete software failure

When an SL2 issue call is received, the Firm will use necessary resources to address the problem within one (1) business day.

### **Severity Level 3 (SL3)**

A severity level 3 (SL3) issue is classified as a routine call. It is a minor or intermittent incident occurring and not significantly affecting production. The incident has one or more of the following characteristics:

- A software error for which there is a customer-acceptable workaround
- Minimal degraded performance due to software error
- Issue affecting a single user
- Software error or incorrect behavior with minor impact to the operation of the system

When an SL3 issue call is received, the Firm will use necessary resources to address the problem within five (5) business days.

### **Severity Level 4 (SL4)**

A severity level 4 (SL4) issue is classified as a request or training call. It is a minor request not significantly affecting production. The incident has one or more of the following characteristics:

A software error for which there is a customer-acceptable workaround

- Minimal degraded performance due to software error
- Software error or incorrect behavior with minor impact to the operation of the system

When an SL4 issue call is received, the Firm will use necessary resources to address the problem within thirty (30) business days.

### **Severity Level 5 (SL5)**

A severity level 5 (SL5) issue is classified as an informational call. It is a minor call for information that does not require an immediate sense of urgency — a task to be completed soon. The incident has one or more of the following characteristics:

- A request for help with 'how-to'
- Negligible business impact
- Single user issue

When an SL5 issue call is received, the Firm will work with the client to determine the timeframe that resolution should occur.

## **SCHEDULE E – ANNUAL SUPPORT & HELP DESK SERVICES**

Schedule E provides information on the Annual Support & Help Desk Services available from The Firm under the terms of this Agreement.

- The Firm will notify the Client at least three (3) days in advance of changes to any key Firm personnel that could potentially affect the delivery of services to the Firm
- The Firm's Help Desk is available to support IntelliGrants users Monday – Friday, 8:00 am – 8:00 pm EST. The Firm's Help Desk will assist the Client's users with the following IntelliGrants Solution tasks and/or events:
  - URL issues and Registration
  - Login/password resets
  - Basic Product Navigation
  - Application Initiation / Post Award Documents
  - User Profile Information Updates
  - Adding New Users to Organizations or Documents
  - Sending Broadcast System Messages
  - Adding or Editing Organizations
  - Approving or Inactivating Users
  - Status Pushes
  - Document Purges
  - Document Designer Topics
  - Process Flow Setup
  - Document Template Setup
  - Form Builder Help
  - Setting System Notifications
  - Administration Menu Builder

Tab Builder

- Report Builder – Simple Queries
- The Firm's Help Desk Services do not include Subject Matter Expert Consultation and/or questions about client specific program configured data
- The Firm provides Subject Matter Expert Consultation and/or question and answers on client specific program configured data via standard maintenance contracts with mutually agreed upon scope, timeline and budget.

## **SCHEDULE F – PROBLEM ESCALATION**

Schedule F provides information on the Problem Escalation procedure to be applied to the services under the terms of this Agreement.

The problem escalation procedure covers the processes involved with the rectification of unexpected solution problems including:

- Initial problem identification
- Resolution of the identified problem
- Technical report documenting root cause

### **Initial Problem Identification**

- IntelliGrants solution is not functioning as expected. User verifies with support from the Help Desk that the issue is not a result of user error and the problem is indeed an issue resulting from problems within the solution.
- The Firm's Support and Help Desk will collect all the details of the problem reported by the user, review the problem and categorize the problem based upon the guidelines outlined in SCHEDULE – D.
- The Firm's Support and Help Desk shall be notified of all problems, no matter the level of priority. This is necessary to log in and track all issues for prompt resolution.

### **Resolution of the Identified Problem**

- The problem is assigned to the best equipped project resource to resolve the issue. The problem will be resolved by the lowest level resource possible. This policy was implemented to improve the response times for our clients and enhance services.
- Based upon the categorization of the problem the resolution will be completed within the timelines defined in SCHEDULE – D.

### **Technical Report Documenting Root Cause**

- After the problem has been resolved, a summary is created documenting the root cause of the issue. In this documentation the cause, analysis and solution are documented to properly define the problem. Additionally, the system is

evaluated for risks that exist of similar nature. If additional potential problems are found, the issues are fixed before another issue develops.

## SCHEDULE G – CHANGE REQUEST FORM

### A. General Information

*Information to be provided in this section gives a specific name to the project as well as pertinent information about the personnel involved.*

**Prepared by:**

**Date Prepared:**

**Control Nbr.  
[Optional]:**

### B. Requestor Information

#### **Proposed Change Description and References:**

The requestor will provide information concerning the requested change along with any supporting documentation to include appropriate screen shots, etc.

#### **Justification:**

#### **Impact of Not Implementing Proposed Change:**

**Alternatives:**

## **Attachment 2 – Intelligrants Architecture**

### **Overview .....**

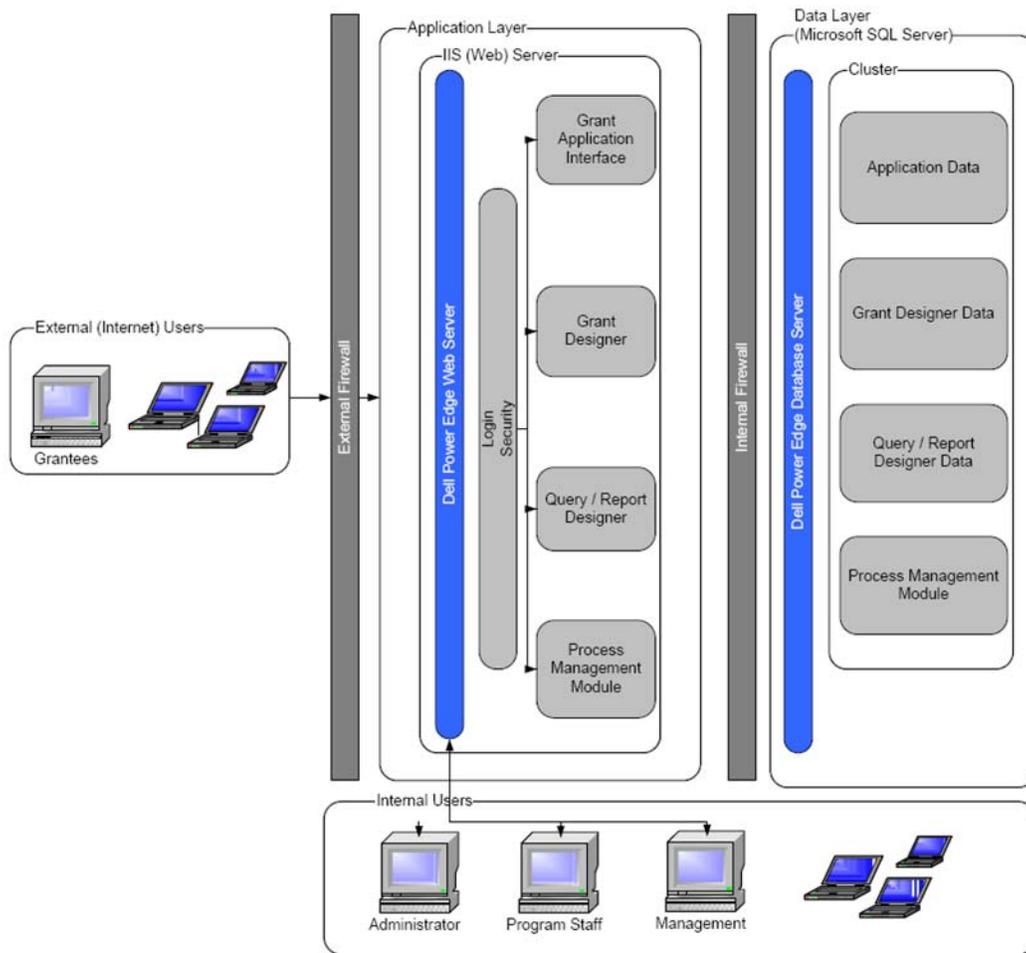
IntelliGrants is a scalable Commercial Off-the-Shelf (COTS) grants management solution, with the flexibility to handle highly specialized individual agencies and/or encompass multiple agencies within one enterprise-wide grant management portal.

This scalability is possible by leveraging a combination of the IntelliGrants 80/20 model, domain structures, and enterprise reporting capabilities.

### **Agate Software Microsoft Certified Partner Information**

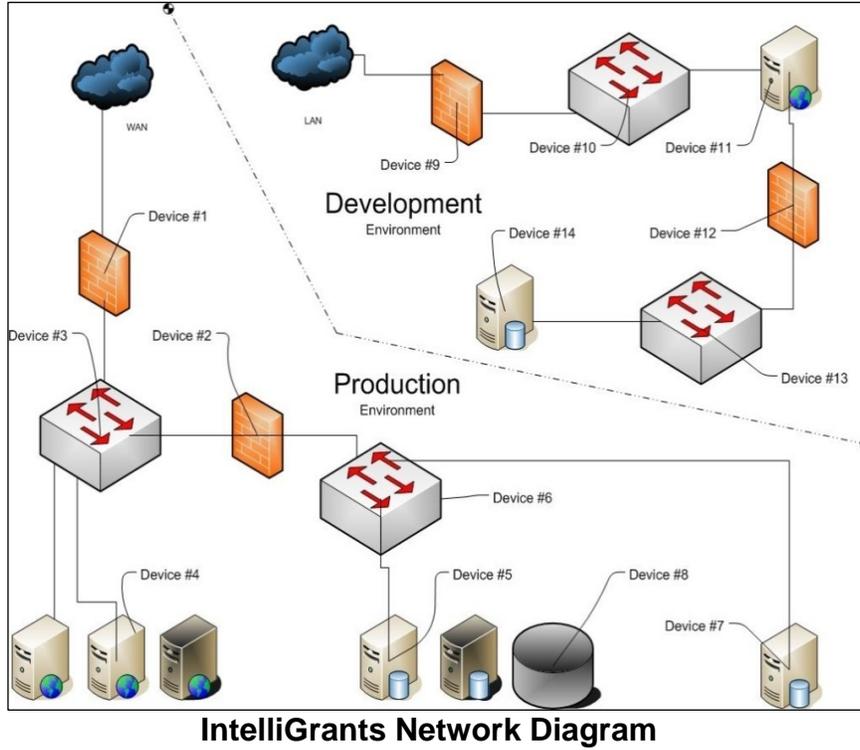
Microsoft Certified Partners possess a high degree of competence and expertise with Microsoft technologies, and may demonstrate their proficiency in one or more Microsoft Competencies<sup>1</sup>. As a Microsoft Certified Partner, Agate Software has built IntelliGrants using the .Net 3.5 web technology on a SQL Server 2008 database. If Agate Software hosts your system, there is no need to obtain licenses for .Net or SQL Server. If you host your solution, you will need to possess the required licenses.

Agate Software's Microsoft Certified Partner number is 1121486.



**IntelliGrants Architecture Diagram**

The following image and description outlines Agate Software's recommendation on hardware and software best practices for this implementation with the Commonwealth of Massachusetts hosting the IntelliGrants solution.



### **Attachment 3 – Hosting Environment**

Servers:

Device #4 - Production Web Server(s)

Dell PowerEdge R710 (or equivalent)

4GB RAM, 2 Intel Xeon 2.0 Ghx Processors

2 Logical Disks (1 – 24GB System Drive, 1 – 48GB Data Drive)

RAID 5

Windows Server 2003 R2 (or newer) Web Edition or newer

ActivePDF Toolkit 4.5 Professional

Device #5 - Production Database Server(s)

Dell PowerEdge R905 (or equivalent)

4GB RAM, 2 Quad Opteron 2.2GHz Processors

4 Logical Disks (1 – 24GB System Drive, 1-48GB Data Drive, 1-12 GB Transaction Log drive on its own controller)

RAID 1

Windows Server 2003 R2(or newer) Standard Edition

Microsoft SQL Server 2005 (or newer)

Device #11- Development/Test Web Server

Dell PowerEdge R710 (or equivalent)

4GB RAM, 2 Intel Xeon 2.0GHz Processors

2 Logical Disks (1 – 24GB System Drive, 1 – 48GB Data Drive)

RAID 5

Windows Server 2003 R2 (or newer) Web Edition or newer

Active PDF Toolkit 4.5 Professional

Device #14 – Development/Test SQL Server

Dell PowerEdge R905 (or equivalent)

4 GB RAM, 2 Quad Core Opteron 2.2GHz Processors

2 Logical Disks (1 – 24GB System Drive, 1 – 48GB Data Drive)

RAID 1

Windows Server 2003 R2 (or newer) Standard Edition

Microsoft SQL Server 2005 (or newer)

Switches:

Devices #3, #6, #10 & #13 - Gigabit Switches

Dell PowerConnect 5324

10/100/1000 Mbps

1 Unit of Rack Space

Firewalls:

Device #1 - External Application Firewall

SonicWall Pro 5060

Port 443 – HTTPS (recommended) or Port 80 HTTP (optional), and port 3389 for Remote Desktop administration (if needed)

1 Unit of Rack Space

409 BTUs

Device #2 - Internal Application Firewall

SonicWall Pro 5060

Port 1433 for SQL Server connectivity, and port 3389 for Remote Desktop administration if needed

1 Unit of Rack Space

409 BTUs

Device #9 - External Application Firewall

SonicWall Pro 5060

Port 443 – HTTPS (recommended) or Port 80 HTTP (optional), and port 3389 for Remote Desktop administration if needed

1 Unit of Rack Space

409 BTUs

Device #12 - Internal Application Firewall

SonicWall Pro 5060

Port 1433 for SQL Server connectivity, and port 3389 for Remote Desktop administration if needed

1 Unit of Rack Space

409 BTUs

Uninterruptable Power Supply: (not shown on diagram)

UPS should be used to supply backup power to equipment physically located together

Expandable Rack UPS System

Tripp-Lite SmartOnline Expandable 3U Rack/Tower UPS System

9 Units of Rack Space

10 KVAs

## **Attachment 4 – Security and Disaster Recovery Process**

Agate Software has created a co-location partnership with CRT/Arialink Broadband for hosting services. The decision was made to co-locate with CRT based on the best interest of our clients. The physical location of the data center is approximately ten miles from the Agate Software headquarters. This close proximity provides us with the ability to access our hardware very quickly. Our co-location partnership allows us to focus on our area of expertise (software development) and CRT to focus on theirs (hosting). The following factors were taken into consideration when making the decision to co-locate our datacenter:

- Security
- Performance
- Connectivity
- Bandwidth
- Reliability

Agate's data center which is co-located at:

### **CRT/Arialink Broadband**

1223 Turner Street

Lansing, MI 48906

Agate's data center is accessible to our clients on a 24/7/365 basis. Agate Software has provided a profile of the co-location data center facilities, networking infrastructure, security provisions, backup and recovery procedures, and disaster recovery plans to ensure client data is protected and is recoverable in case of a system failure.

### **Entrance Security**

- An Electronic Card Swipe is required to enter the locked entranceway
- Second, an alarm code must be submitted for access to the data center door
- A bio-metric hand scan with a corresponding pin number is the third level of protection needed each time an engineer enters the data center

### **Power Redundancy**

- The data center is connected to the public utilities via redundant power grid connections for primary power requirements
- Each hosting cabinet is provided power via a dedicated 20 amp circuit connected to an MGE Comet on-line UPS battery backup and conditioning system
- The online UPS systems are rated to provide hours of uninterrupted backup power for the entire data center
- After 15 seconds of consecutive downtime, our Koehler Diesel generator begins to supply power to the data center
- The facility stores enough fuel on-site for extended run-time of greater than 1 week

- All power outlets utilize Hubbell twist lock receptacles guarding against accidental power loss

### **Quality Assurance Monitoring**

- Includes Managed Escalation Services (24x7x365)
- Provides real-time web based health reporting, trend reporting and remote management
- Email notification of failures
- Admin responds by following pre-written procedures as supplied by client to assist in failure recovery

### **Back-Up**

- Managed backup service to data unit located in the Data Center
- Up to two (2) Bare Metal Image Backups per year
- Weekly Full (Data) Backups
- Daily Incremental (Data) Backups
- Up to 50Gb Disk Space
- Additional Disk Space is available if needed
- Off-site backup storage is available upon request

### **Bandwidth**

- 100Mb Full Duplex, Burstable
- The provider guarantees the host management facility utilizes a "dual entrance fiber facility" with a minimum of two competing fiber-optic telecommunication providers.
- The fiber-optic networks connected to the host management facility enters the building in different concealed locations and leaves the facility in a minimum of two diversified geographical paths with a minimum of 500ft of buried and concealed underground cable.
- The hosting center is engineered with enough bandwidth to scale on-demand due to superior fiber infrastructure.
- The network exists as Gigabit Ethernet (1000 Mb/s) as well as an OC3 (155 Mb/s) of online 'lit' fiber.
- The provider has enough dark fiber for ten additional OC12, OC48 or OC192 circuits.
- The provider's utilization is measured using the MRTG (multi-router traffic grapher) suite of SNMP monitoring tools.
- Each customer switch port will be monitored and reported for on-demand review.
- Bandwidth CIR's, the provider strictly monitors and guarantees this bandwidth is available at a minimum level.

### **Facility Environment**

- CRT/Arialink uses Netbotz to monitor key environmental factors like temperature and humidity. Netbotz uses active monitoring, early detection and instant alerting to

protect critical assets from environmental conditions such as extreme heat & water leaks, human error, sabotage and virtually everything else in between, from power spikes to radioactive and chemical materials.

- Arialink's data center is connected to the public utilities via redundant power grid connections for primary power requirements.
- Each hosting cabinet is provided power via a dedicated 20 amp circuit connected to an MGE Comet on-line UPS battery backup and conditioning system.
- Arialink's online UPS system is rated to provide hours of uninterrupted backup power for the entire data center.
- After 15 seconds of consecutive downtime, our Koehler Diesel generator begins to supply power to the data center.
- Arialink stores enough fuel on-site for extended run-time of greater than 1 week.
- All power outlets utilize Hubbell twist lock receptacles guarding against accidental power loss.
- Arialink guarantees the host management facility utilizes a "dual entrance fiber facility" with a minimum of two competing fiber-optic telecommunication providers.
- The fiber-optic networks connected to the host management facility enters the building in different concealed locations and leaves the facility in a minimum of two diversified geographical paths with a minimum of 500ft of buried and concealed underground cable.
- Arialink's HVAC system includes a backup system to keep the data center at its proper temperature level.

## System Recovery

Recoverability entails the ability of the system to recover from a variety of faults, ranging from small-scale outages such as a system reboot (emergencies), to catastrophic failures (disasters) such as physical destruction of the systems hardware.

### Backup and Archival Procedures

Data and system backups are performed on a per unit basis and can be set to an appropriate interval determined by Agate Software, and client staff. Recommended back-up schedule is as follows:

- An automatic, full backup on a nightly basis (2:00 AM is recommended)
- An incremental/differential backup every three hours
- Daily incremental tape backups will be retained for at least 1 month
- Weekly full tape backups of logs will be retained for at least 1 month

### Restoration of IntelliGrants System

In the case of a minor emergency, specific action must be taken to correct the affected components of the system.

In the case of a major emergency or a disaster resulting in the loss of the data, the Web application or both, a system restoration will be required. Agate will take the following steps to restore the system:

1. Active PDF Installation
2. IIS Setup
3. Microsoft SQL Server 2005 installation and configuration
4. IntelliGrants database installation
5. IntelliGrants web files installation

The success of a system restoration depends on the accuracy and timeliness of the data and system backups. Full digital backups are held under fireproof vault and can be retained if/when needed.

**Attachment 5 - COST TABLES**

**Table 1: Summary of IntelliGrants 5 year Contract Costs by Agency**

No.	Project Costs	Cost (\$)
A.	Michigan State Police – OHSP software maintenance and support, enhancements and hosting – 5 years Breakdown provided in Table 2	\$279,500
B.	Michigan State Police – ODCP software maintenance and support, enhancements and hosting – 5 years Breakdown provided in Table 3	\$279,500
C.	Michigan Department of Community Health – Crime Victim’s software maintenance and support, enhancements and hosting – 5 years Breakdown provided in Table 4	\$650,000
D.	Michigan Department of Labor and Economic Growth (DeLEG) BWT - software maintenance and support, enhancements and hosting – 5 years Breakdown provided in Table 5	\$424,500
E.	Michigan Department of Education (MDE)-software maintenance and support, enhancements and hosting – 5 years Breakdown provided in Table 6	\$4,300,000
	<b>TOTAL COST FOR ALL AGENCIES FOR 5 YEARS</b>	<b>\$5,933,500</b>

**Table 2: Annual Software Maintenance and Support, Enhancements and Hosting Michigan State Police (MSP) Office of Highway Safety and Planning (OHSP)**

AGENCY	(10/1/10 – 9/30/11) YEAR 1	(10/1/11 – 9/30/12) YEAR 2	(10/1/12 – 9/30/13) YEAR 3	(10/1/13 – 9/30/14) YEAR 4	(10/1/14 – 9/30/15) YEAR 5	Total Years (1-5)
<b>MSP/OHSP</b>						
Ongoing maintenance and support	24,900	24,900	24,900	24,900	24,900	124,500
Enhancements	31,000	31,000	31,000	31,000	31,000	155,000
Hosting	0	0	0	0	0	0
<b>Grand Total MSP/OHSP maintenance and support, enhancements and hosting</b>						<b>279,500</b>

**Table 3: Annual Software Maintenance and Support, Enhancements and Hosting Michigan State Police (MSP) Office of Drug Control Policy (ODCP)**

AGENCY	(10/1/10 – 9/30/11) YEAR 1	(10/1/11 – 9/30/12) YEAR 2	(10/1/12 – 9/30/13) YEAR 3	(10/1/13 – 9/30/14) YEAR 4	(10/1/14 – 9/30/15) YEAR 5	Total Years (1-5)
<b>MSP/ODCP</b>						
Ongoing maintenance and support	24,900	24,900	24,900	24,900	24,900	124,500
Enhancements	31,000	31,000	31,000	31,000	31,000	155,000
Hosting	0	0	0	0	0	0
<b>Grand Total MSP/ODCP maintenance and support, enhancements and hosting</b>						279,500

**Table 4: Annual Software Maintenance and Support, Enhancements and Hosting Michigan Department of Community Health (DCH) Crime Victim's**

AGENCY	(10/1/10 – 9/30/11) YEAR 1	(10/1/11 – 9/30/12) YEAR 2	(10/1/12 – 9/30/13) YEAR 3	(10/1/13 – 9/30/14) YEAR 4	(10/1/14 – 9/30/15) YEAR 5	Total Years (1-5)
<b>DCH/Crime Victim's</b>						
Ongoing maintenance and support	79,120	79,120	79,120	79,120	79,120	395,600
Enhancements	50,880	50,880	50,880	50,880	50,880	254,400
Hosting	0	0	0	0	0	0
<b>Grand Total DCH/Crime Victims maintenance and support, enhancements and hosting</b>						650,000

**Table 5: Annual Software Maintenance and Support, Enhancements and Hosting Michigan Department of Labor and Economic Growth (DeLEG) BWT**

AGENCY	(10/1/10 – 9/30/11) YEAR 1	(10/1/11 – 9/30/12) YEAR 2	(10/1/12 – 9/30/13) YEAR 3	(10/1/13 – 9/30/14) YEAR 4	(10/1/14 – 9/30/15) YEAR 5	Total Years (1-5)
<b>DeLEG/BWP</b>						
Ongoing maintenance and support	50,000	50,000	50,000	50,000	50,000	250,000
Enhancements	14,980	14,980	14,980	14,980	14,980	74,900
Hosting	0	24,900	24,900	24,900	24,900	99,600
<b>Grand Total DeLEG/BWP maintenance and support, enhancements and hosting</b>						424,500

**Table 6: Annual Software Maintenance and Support, Enhancements and Hosting Michigan Department of Education (MDE)**

AGENCY	(10/1/10 – 9/30/11) YEAR 1	(10/1/11 – 9/30/12) YEAR 2	(10/1/12 – 9/30/13) YEAR 3	(10/1/13 – 9/30/14) YEAR 4	(10/1/14 – 9/30/15) YEAR 5	Total Years (1-5)
<b>MDE</b>						
Ongoing maintenance and support	740,000	740,000	740,000	740,000	740,000	3,700,000
Enhancements	120,000	120,000	120,000	120,000	120,000	600,000
Hosting	0	0	0	0	0	0
<b>Grand Total MDE maintenance and support, enhancements and hosting</b>						4,300,000

**Table 7: Future Enhancements-New Grant Implementations Rate Card**

Resource Type	Hourly Rate (\$)	Comments
Project management	100.00	All Agate hourly service fees are provided at a blended rate.
Business analysts	100.00	
System analysts	100.00	
Programmer/developers	100.00	
System administrators	100.00	
Database administrators	100.00	
Q/A Manager	100.00	
Security specialist	100.00	
Testers	100.00	
Technical writers	100.00	
CM specialists	100.00	
System Architects	100.00	
Network engineer/administrator	100.00	
Software Architects	100.00	
CM specialists	100.00	
Project assistants	100.00	
Web developers	100.00	
Application trainers	100.00	
Others: (List) below:	100.00	

Notes:

1. Hourly rates quoted are firm, fixed rates for the duration of the contract. Travel and other expenses will not be reimbursed. 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/new implementations will occur on a yearly basis, and there is no guarantee as to the level of funding, if any, available to the project.
3. 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

The parties agree that the Services/Deliverables to be rendered by Contractor using the 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