

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

April 10, 2012

**NOTICE
 TO
 CONTRACT NO. 071B2200094
 between
 THE STATE OF MICHIGAN
 and**

NAME & ADDRESS OF CONTRACTOR ACT, Inc. 500 ACT Drive Iowa City, IA 52243 <p style="text-align: right;">tom.goedken@act.org</p>	TELEPHONE (319) 337-1152 Tom Goedken BUYER/CA (517) 241-3768 Lance Kingsbury
Contract Compliance Inspector: Douglas Collier (517) 241-4431 <p style="text-align: center;">Administration of ACT Plan and Explore Examination — MDE (BAA)</p>	
CONTRACT PERIOD: 1 yr., 7Mos. From: April 18th, 2012 To: September 30, 2013	
TERMS N/A	SHIPMENT N/A
F.O.B. N/A	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A	

Current Authorized Spend Limit: \$3,400,000.00

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MISCELLANEOUS INFORMATION: <p>Estimated Contract Value: \$3,400,000.00</p>	

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the ITB No.313R2200040. Orders for delivery will be issued directly by the Department of Education, Bureau of Assessment & Accountability through the issuance of a Purchase Order Form.

<p>FOR THE CONTRACTOR:</p> <p style="text-align: center;">ACT, Inc. _____ Firm Name</p> <p style="text-align: center;">_____ Authorized Agent Signature</p> <p style="text-align: center;">_____ Authorized Agent (Print or Type)</p> <p style="text-align: center;">_____ Date</p>	<p>FOR THE STATE:</p> <p style="text-align: center;">_____ Signature Jeff Brownlee , Chief Procurement officer Name/Title DTMB-Procurement</p> <p style="text-align: center;">_____ Date</p>
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**CONTRACT DEFINITIONS**

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

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

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

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

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

Blanket Purchase Order is an alternate term for Contract and is used in the Plan Sponsors' computer system.

CCI means Contract Compliance Inspector.

Days means calendar days unless otherwise specified.

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

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

DTMB means the Michigan Department of Technology Management and Budget.

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

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

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

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

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

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

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

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

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



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

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

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

SLA means Service Level Agreement.

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

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

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

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

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

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

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

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



EDUCATION AND ASSESSMENT DEFINITIONS

ACT® – American College Testing The ACT® test assesses high school students' general educational development and their ability to complete college-level work.

Accommodation Accommodations are practices and procedures in the areas of presentation, response, setting, and timing/scheduling that provide equitable access during instruction and assessment for students with disabilities. Educators and administrators design accommodations in order to compensate for or mitigate a disability the student may have, or to address a physical, mental, or emotional need a student exhibits. Accommodations administered both in regular instruction and during assessments are one way that educators ensure that students have access to education in a way that is equal to their peers. Accommodations are intended to reduce or eliminate the effects of a student's disability; they do not reduce the learning experience.

Alternate Assessment An assessment used to measure the learning progress and performance of students with disabilities whose Individualized Education Programs (IEP) Teams have determined it is not appropriate for them to participate in general education assessments (i.e., the MEAP or the MME). As allowed by federal law, these assessments may be based either on grade-level achievement standards or alternate achievement standards.

Assessment A tool or instrument that measures what a student knows and can do. This measurement is often expressed as a score on a numerical rating scale, as well as a description of a performance level.

Assessment Accommodation Assessment accommodations change the way a student accesses an assessment without changing the actual standards the student is working toward or the content being assessed. The goal of an assessment accommodation is to minimize the impact of a student's disability on his or her performance on an assessment. Decisions regarding assessment accommodations are to be made on a case-by-case basis and are to be based on relative appropriateness to a disability and the impact it has on the student. Decisions about assessment accommodations should be made well in advance of the actual assessment.

Benchmark While content standards describe what all students should know and be able to do in certain broad subject areas, benchmarks indicate what students should know and be able to do at various developmental levels (i.e., early elementary, later elementary, middle, and high school) within the content standards (Michigan Curriculum Framework, page eight).

Bureau of Assessment and Accountability (BAA) A Bureau in the Michigan Department of Education that oversees all Statewide educational assessment and accountability programs. The Bureau includes three offices: Office of Assessment Business Operations (OABO); Office of Psychometrics, Accountability, Research, and Evaluation (OPARE); Office of Standards and Assessments (OSA).

Common Core State Standards Common Core State Standards focus on core conceptual understandings and procedures starting in the early grades, thus enabling teachers to take the time needed to teach core concepts and procedures well—and to give students the opportunity to master them.

Content Area A course or discipline of study, including reading, mathematics, science, social studies, and writing. (Content areas can also include languages, art, music, theatre arts, and other disciplines not typically assessed on statewide assessments.)

Disability The Individuals with Disabilities Education Act (IDEA) has defined a disability as “mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance, an orthopedic impairment, autism, traumatic brain injury, another health impairment, a specific learning disability, deaf-blindness, or multiple disabilities.”

English Language Learner (ELL) The Michigan definition is a student who has a primary or home language other than English who—because of limited proficiency in speaking, reading, writing, and understanding the English language—requires alternative programs or services to equally access the local educational agency's total academic curriculum. These students are sometimes referred to as students with limited English proficiency (LEP).



English Language Proficiency Assessment (ELPA) The ELPA is administered in the spring of each school year to all students enrolled in grades K through 12 who are eligible for limited English proficiency (LEP) services. The term English language learner, or ELL, has been adopted by the State to refer to students who are either learning English as a second language or participating in a bilingual program. The ELPA was developed primarily to improve the manner in which ELLs are assessed. It does that by supporting the State's goal of having one uniform measure to help Michigan educators determine how much progress students are making with learning English skills from one year to the next.

MEAP-Access One of five components of the MEAS, it is the State's Alternate Assessment based on Modified Achievement Standards (AA-MAS). It is used to assess students, with IEPs in grades three through eight, in the content areas of reading, writing, and mathematics.

MI-Access One of five components of the MEAS, MI-Access is intended for students for whom the MEAP, the MME, or MEAP-Access with or without assessment accommodations are not appropriate as determined by a student's IEP Team. It is an Alternate Assessment based on Alternate Achievement Standards (AA-AAS).

Michigan Department of Education Under the direction of the Superintendent of Public Instruction, this agency carries out the policies of the State Board of Education and implements federal and State legislative initiatives.

Michigan Educational Assessment Program (MEAP) One of five components of the MEAS, it is the State's general education assessment for students in grades three through nine and is used Statewide to assess student performance in specific content areas. The MEAP's content is aligned to the Model Content Standards of the Michigan Curriculum Framework.

Michigan Educational Assessment System (MEAS) The State Board of Education-approved assessment system in Michigan, which is comprised of five assessment programs, including the ELPA, the MEAP, the MME, MEAP-Access, and MI-Access.

Michigan Merit Curriculum (MMC) A set of Statewide graduation requirements. This curriculum is designed to prepare Michigan's students with the knowledge and skills needed for the jobs in the 21st Century. All required courses/credits must be aligned with Course/Credit Content Expectations and Guidelines developed by Michigan Department of Education.

Michigan Merit Examination (MME) One of five components of the MEAS. It is the State's general education assessment for students in grade 11 (or eligible students in grade 12) and is used Statewide to assess student performance in specific content areas. The MME's content is aligned to the Model Content Standards of the Michigan Curriculum Framework.

Michigan Student Data System (MSDS) Data submitted by school districts, including discrete information about individual students, such as age, gender, ethnicity, and program participation. The data collected via the MSDS is used to meet the reporting requirements of the federal No Child Left Behind Act of 2001, including the determination of Adequate Yearly Progress (AYP). Formerly called the Single Record Student Database.

Office of Assessment Business Operations (OABO) A division of the Bureau of Assessment and Accountability under which all finance, composition, and professional development functions are consolidated.

Office of Psychometrics, Accountability Research, and Evaluation (OPARE) A division of the Bureau of Assessment and Accountability under which all psychometric, accountability, research and data management functions are consolidated.

Office of Standards and Assessments (OSA) A division of the Bureau of Assessment and Accountability under which all standards and assessment functions are consolidated.

Progress Annual gains made by the student, as evidenced by the acquisition of what the student knows and can do or by an increase in assessment scores or performance levels.



Public School Academy (PSA) A public school academy (PSA) is an independent State-supported public school (one school that operates like an individual school district.) It may serve K-12 or any combination of grade levels. Some specialize in cultivating certain skills (i.e., performing arts, science and math). PSAs may not charge tuition. By law, the PSA's funding may not exceed the amount received by the local school district where the PSA is geographically located.

Unique Identification Code A State-assigned code that allows the State to track student information without using a student's name.

WorkKeys® is a job skills assessment system that helps employers select, hire, train, develop, and retain a high-performance workforce



Article 1 – Statement of Work (SOW)

1.010 Project Identification

1.011 Project Request

The purpose of this Contract is to provide “off the shelf” tests designed to provide data in support of college and career readiness. These tests will be offered in spring 2012-13 to all schools with students enrolled in grades eight and 10. As key components of Michigan’s education reform assessments, the proposed tests must be closely aligned with the ACT, which is the college-entrance component of the Michigan Merit Examination (MME). Results of these ACT predictor tests are used as measures of academic growth for high school students and educator effectiveness. The Contractor must use “off the shelf” testing materials and standard processes in carrying out the specified tasks. The Contractor must provide a standard student data file that includes Michigan’s student identification information for all participating students who were included in the State’s pre-id file to the Contractor as input in producing the Contractor’s standard bar code labels for the selected tests.

1.012 Background

The Bureau of Assessment and Accountability (BAA) is responsible for educational assessment and accountability programs in the State of Michigan. The BAA is composed of three offices, the Office of Standards and Assessments (OSA), the Office of Psychometrics Accountability Research and Evaluation (OPARE) and the Office of Assessment Business Operations (OABO). The OSA is responsible for the development, administration, scoring and reporting of all Statewide educational assessment programs for K-12 students, including:

- The Michigan Educational Assessment Program (MEAP) which assesses students in grades three through nine;
- The MME, which assesses students in grade 11, was first implemented in spring 2006 after a successful pilot was performed in the 2005-2006 school year;
- MEAP-Access, Michigan’s alternate assessment program for students with moderate cognitive disabilities, which assesses reading and mathematics for specific students in all of the grades assessed in grades three through eight;
- MI-Access, Michigan’s alternate assessment program for students with severe cognitive disabilities, which assesses specific students in all of the grades assessed in MEAP or MME;
- The Michigan English language proficiency assessment (ELPA) for English language learners (ELLs) in grades K-12.
- The education reform assessments consist of tests that are developed or selected to use as a measure of student academic growth and educator effectiveness.
 1. Secondary credit assessments have been developed as end-of-course model assessments that are available for high school courses with larger enrollments.
 2. Interim/benchmark assessments are also being developed, focusing first on grade levels and subject area that are not currently tested statewide as part of the Michigan Educational Assessment System.
 3. Tests designed to measure progress toward college readiness and are closely aligned with the ACT component of the MME are planned to be used in grades eight and 10 in order to assist high schools in providing data to determine student academic growth and educator effectiveness.

A key aspect of offering tests designed to provide data in support of college and career readiness in the spring of grade eight and 10 is to align the results to an existing high school college-entrance measure, the ACT, which is contained in the MME. The MME has three distinct components administered over three days:

Day 1 is the ACT® Plus Writing college entrance examination which consists of content that educators agree is important and a prerequisite to successful performance in entry-level college courses;



Day 2 is the WorkKeys® component which is designed to measure the degree to which students are career-ready;

Day 3 consists of the Michigan-developed assessments that are designed to show how students are doing on certain skills and knowledge not covered by Day 1 and Day 2 assessments.

The MME is the State's general education assessment used to assess grade 11 students on the Michigan Merit curriculum. Test items from all three days are used to produce results in the content areas of reading, writing, mathematics, science, and social studies.

Since the MME is administered in the spring of each school year, the requested tests must be designed to provide data in support of career and college readiness as an ACT predictor, and are to be given at approximately the same time to maximize the ability to align results across grades eight, 10 and 11. The results of the grade eight predictor tests must accurately predict the results of the grade 10 predictor test; and the results of the grade 10 predictor test must accurately predict the results of the grade 11 MME-Day 1 college entrance test (ACT®).

Close alignment and accurate linkage is required to use the results of all three tests (grades eight, 10 and 11) as a measure of student academic growth and to provide data in support of career and college readiness.

1.020 Scope of Work and Deliverables

1.021 In Scope

The following pertains to all assessments related to this Contract:

- "Off the shelf" tests and services for both grades eight and 10 that predict performance on the ACT®, the college entrance examination that is administered to Michigan's grade 11 students each spring;
- Completed alignment results and evidence for each of the proposed ACT predictor tests (grades eight and 10) and the ACT college entrance component of the MME which is given to Michigan students in grade 11;
- Use of State of Michigan pre-identification file to populate Contractor's standard barcode labels;
- Use of standard assessment products and processes to administer and score the proposed tests;
- Inclusion of Michigan's statewide student number, the Unique Identification Code (UIC), and the Barcode Number as 10 digit fields included in Contractor's standard file format;
- The use of the ACT Online Prep tool for all Michigan High School Student's for Two- years

The following are out of scope for this Contract:

- "Off the shelf" or customized college-entrance examination for grade 11;

1.022 Work and Deliverable

The Contractor must support "off-the-shelf" eighth and 10th grade assessments using ACT's EXPLORE® (eighth Grade) and PLAN® (10th Grade) assessments in the spring of 2012 and 2013.

The project must incorporate "off-the-shelf" standard processes to carry out the test administration. Following testing, the Contractor must provide Michigan a standard student data file. This must include Michigan's student identification information (Michigan 10-digit UIC and Barcode numbers) for each student provided by the Michigan Bureau of Assessment and Accountability (BAA) in the Pre-ID label file.

The Contractor must support EXPLORE and PLAN testing during the spring of 2012, and 2013 spring testing window. The Contractor must deliver EXPLORE and PLAN testing to Michigan's eighth and 10th grade students only for this pilot utilizing standard "off-the-shelf" processes. These processes include:

- The BAA will provide the Contractor with participating district-school eligibility files, one for eight grade EXPLORE and one for 10th grade PLAN. Due to the compressed schedule, this may occur shortly after Contract award to maximize the time allowed for test materials ordering and Pre-ID Label processing. See– Michigan EXPLORE-PLAN Milestone Schedule.



- Participating districts will enter school-level materials orders for all schools in their district using ACT's online College and Career Readiness Information System (CCRIS). This will occur during the materials order window listed in the Michigan EXPLORE-PLAN Milestone Schedule. The schedule for 2013 will be determined at a later date.
- The BAA will provide the Contractor with Pre-ID files for both EXPLORE and PLAN test takers. These will be provided in the Contractor's standard Pre-ID file layout and will include Michigan specific UIC and 10-digit Barcode numbers. These files must be used by the Contractor to generate barcode labels that schools will affix to the answer documents.

Test Alignment and 2012-13 Schedules

Since the MME is administered in the spring of each school year, the ACT predictor tests (grades eight and 10) are to be given at approximately the same time to maximize the ability to predict success for each test taken. The results of the proposed test for grade eight test must accurately predict the results of the proposed test for grade 10 test; and the results of the grade 10 test must accurately predict the results of the grade 11 MME-Day 1 college entrance test (ACT®).

- The ACT predictor tests must be offered to all public schools and Public School Academies (PSAs) in the State of Michigan with students enrolled in grades eight and 10. The administration of these tests is scheduled to occur as outlined in the Michigan EXPLORE-PLAN Milestone Schedule. The schedule for 2013 will be determined at a later date; however it is expected to be given March 4 - April 12th, 2013.

Test Administrator Training

The Contractor is responsible for all costs associated with training test administrators for the ACT predictor tests in grades eight and 10 using standard processes and procedures. The Contractor must provide a variety of training programs and must be offered, as needed, including in-person workshops, webinars, and conference sessions to meet the needs of the EXPLORE and PLAN program at no additional charge.

Testing Materials and Other Ancillary Documents

Contractor "off-the-shelf" testing materials for the proposed tests must include manuals, test booklets and answer documents. Ordering of all testing materials is handled by districts using the Contractor's website. A file of schools making orders must be sent by the Contractor to the State of Michigan for purposes of pre-identification of students.

BAA will provide the Contractor with a list of participating schools and districts. This includes the school-district affiliations, which are required for aggregate reporting. PSAs that do not roll up to a district will list BAA as their district for reporting purposes. BAA will provide two separate eligibility files, one for EXPLORE and one for PLAN. BAA will provide each file to the Contractor electronically using the Contractor's standard eligibility file layout.– Eligibility File Layouts.

Upon receipt of the eligibility files, the Contractor must set the schools and districts as eligible to receive materials and reports under the BAA-pilot funded EXPLORE and PLAN program. This is required for materials ordering and aggregate reporting purposes.

Participating districts will enter school-level materials orders for all schools in their district using the Contractor's online College and Career Readiness Information System (CCRIS). This will occur during the materials order window listed in the Michigan EXPLORE-PLAN Milestone Schedule. The schedule for 2013 will be determined at a later date; however it is expected to be given March 4 - April 12th, 2013.

As part of the online test materials order process, districts will:

- 1) Create an account on the Contractor's system.
- 2) Select the Michigan EXPLORE or PLAN program. This allows test materials to be ordered and reports to be generated under the Contact.
- 3) Agree to the terms and conditions listed in the online district participation agreement text (DPA). The Contractor must provide sample DPA text to BAA for updating and approval. Once the Contractor and BAA agree upon the final text, it must be included in the order system as part of the Michigan EXPLORE-PLAN ordering process.
- 4) Order test materials (including any supplemental orders as needed) during the ordering window listed in Appendix G – Michigan EXPLORE-PLAN Milestone Schedule.



- 5) Enter the Test Materials Delivery Date for delivery of test materials to each school. To avoid paying expedited shipping charges, this will occur within the dates specified in Appendix G – Michigan EXPLORE-PLAN Milestone Schedule.
- 6) Specify whether student and school reports will be shipped to the school or district.

Important notes:

- 1) Only districts and schools included on the eligibility/participation file will appear on the ordering site. If they do not, the district will contact the Contractor, and then the Contractor must confirm with BAA whether the district or school is participating. The district or school can only be added to the order system once BAA provides email confirmation that the school or district is participating. This ensures that only participating (eligible) schools and districts can place materials orders and have their data reflected in aggregate reports.
- 2) If BAA provides data for schools or districts that cannot be verified by the Contractor's system. The Contractor and BAA will work together to resolve the discrepancies. This ensures accuracy of eligible schools and districts, as well as addresses for shipping test materials and reports.
- 3) Districts will order materials only receiving an email from the Contractor. The day the ordering system is available, districts will receive an email notifying them that they can order test materials. This email will include a personalized link for creating their account.
- 4) Districts and schools will not share test materials with other schools. The Contractor's system maps scoring orders to test materials orders, therefore all schools testing must have a test materials order in order to receive reports.

PSAs ordering only for their school will follow the district process explained above.

Accommodation Materials

Administration of EXPLORE and PLAN tests with special accommodations is entirely at the discretion of school personnel. The Contractor must provide accommodated administrations only for students with current documented disabilities and those who have been professionally diagnosed as physically or learning disabled such that they cannot test under standard conditions. Schools will have the final determinations for special accommodations, and should strive to provide accommodations consistent with ACT administration guidelines.

The Contractor must provide the quantities of accommodated materials ordered by the districts as described in the *Ordering* section.

The Contractor must provide the following accommodated test materials:

- Braille – includes Braille Book Return Notice
- Large Print – includes Large Print Response Sheet and a note reminding the Test Supervisor to transcribe answers from the response sheet to the answer folder (since the response sheet is not scored).
- Audio CD
- Reader's Script

Additional information about marking appropriate codes on the EXPLORE or PLAN answer documents and testing using accommodated materials (such as notes and scripts) is located in the EXPLORE and PLAN Supervisor's Manuals.

Emergency Form

No emergency forms will be required for the assessment tests. Students who have invalidated test scores will not be re-assessed with an emergency form.

Pre-identification File and Unique Identification Code (UIC)

The BAA will provide the Contractor with Pre-ID files for both EXPLORE and PLAN test takers. These will be provided in the Contractor's standard Pre-ID file layout and will include Michigan specific UIC and 10-digit Barcode numbers. These files must be used by ACT to generate barcode labels that schools will affix to the answer documents.

**Student Labels**

This pre-id file will be provided to the Contractor. The file will include the student Unique Identification Code (UIC) and barcode number, which is used by the State to identify each student. Any student who does not have a label at the time of testing will fill in the alpha grid on the front cover of the answer document with all information required for the BAA to assign the appropriate UIC after the test is taken and the data file is provided.

The Contractor must use the site codes for schools identified by BAA on the EXPLORE and PLAN Eligibility files to populate the Pre-ID layout templates. These will be checked against the site codes in the test materials orders. Once the site codes are added, the Contractor must send the EXPLORE and PLAN Pre-ID templates to BAA.

BAA will use the Contractor's standard file layout and state instructions to populate the Pre-ID files with student information. There are separate layouts for EXPLORE and PLAN. BAA will provide one file for EXPLORE and one file for PLAN.

BAA will include the student Unique Identification Code (UIC) and the barcode (used by the State to identify each student) in the optional fields of ACT's standard file layout.

Per the Contractor's standard model where states provide the Pre-ID label files, ACT has 20 business days (excluding Contractor holidays) to generate Pre-ID labels. This does not include shipping and is upon receipt of a valid, encrypted file from BAA.

The Contractor must ship Pre-ID labels separately from test materials orders.

For students participating in the EXPLORE/PLAN testing wherein a barcode label was not generated, they will be able to grid their state student ID in the designated section of the Answer Document (Block H for EXPLORE and Block D for PLAN).

Estimated Counts of Materials

The standard "off-the-shelf" process will be for BAA to provide the Contractor with a list of participating districts and schools along with estimated enrollments prior to ordering

Test Material Overages

Overages are based on the amount of standard time test materials provided for each school when the district places the order. For accommodated materials no overages are applied.

The Contractor must include an overage of test materials for the following items:

- Test Booklet
- Answer Folder
- Instructions for Completing Your Answer Folder
- Why Take EXPLORE? / Why Take PLAN?

The standard overage amount provided is listed below:

- Orders of 1-10 students must receive an overage of one set of materials
- Orders of 11-50 students must receive an overage of three sets of materials
- Orders of 51- 200 students must receive an overage of five sets of materials
- Orders of 201-500 students must receive an overage of 10 sets of materials
- Orders of 501-1000 students must receive an overage of 15 sets of materials
- Orders of 1001+ students must receive an overage of 20 sets of materials

Materials Distribution/Retrieval**1. Materials Distribution**

The Contractor must pay for all outbound and inbound materials distribution (to one location) and receipt of answer documents (excluding expedited shipping charges).

The Contractor must have test materials and Pre-ID labels shipped directly to the schools. If BAA requests materials be sent to districts, materials will be boxed and labeled by school. Districts will be responsible for costs of transferring test materials to the schools.



Test materials and Pre-ID labels must be shipped separately. The Pre-ID label shipment includes the labels and instructions on how to place the label on the Answer Folder.

The organization receiving the test materials (school or district) must receive an email with the shipping confirmation tracking number and vendor once the Contractor releases the shipment.

2. Materials Return

Schools will package and return completed answer documents and headers per the instructions provided in the Supervisor's Manuals. They will use the envelopes and/or polymailers provided by the Contractor with the test materials shipment.

Schools will return answer documents to the Contractor by the Answer Document Receipt Date, listed in– Michigan EXPLORE-PLAN Milestone Schedule. Answer documents received after the Answer Document Receipt Date will not be included in any aggregate (district or state) reports, and any cost will be at the District or School responsibility, and will not be included or paid for under this pilot.

The Contractor's Customer Services must contact the district to see if they wish to fund the reports at the Contractor's National EXPLORE or PLAN rate. If the district does not wish to pay, the Contractor Customer Services must contact the school to see if they wish to fund the reports at the Contractor National EXPLORE or PLAN rate.

- If the district or school agrees to fund the assessment(s), the Contractor must score the answer documents and invoice the school accordingly. If the data is scored under the Contractor's national program (outside the scope of the Contract), it must not be included in the aggregate reporting. BAA may request that the school or district provide the data directly to BAA.
- If the school does not want to fund the assessment(s), the Contractor must securely dispose of the answer documents.

3. Support

The Contractor must provide customer service support for EXPLORE and PLAN. This must be available from ordering, during the test administration window (e.g. implementing and administering the assessments) through reporting. The toll-free number below must be staffed Monday through Friday (excluding Contractor holidays), from 8:30 a.m. to 5:00 p.m. CST at (877) 789-2925 or CustomerServices@act.org.

The Contractor provides assistance for materials distribution and retrieval processes; however, this is not available online to schools and districts as part of our "off-the-shelf" processing.

The Contractor may refer questions, including, but not limited to, eligibility (students, schools and districts), district reimbursement, and testing populations to BAA.

4. Issues

In the event of a known distribution or retrieval issue, the Contractor must contact the appropriate schools, districts, and BAA regarding the issue and resolution plan.

Processing and Scanning of Scorable Documents

1. Scanning

The Contractor must process the Michigan EXPLORE / PLAN assessment utilizing the Contractor's standard Scan, Edit, Score routines that have been developed to ensure accuracy and quality of data. The Contractor must use the standard procedures to verify data accuracy at each processing step, including answer document receipt, scanning, and scoring. This also involves monitoring Pre-ID label processing and performing regular scanner read levels for accuracy.

EXPLORE and PLAN Scoring

Once EXPLORE and PLAN completed answer documents arrive at the Contractor for scoring, they are processed using the standard production control systems.

The processes supported by these systems include:

- Check-in and Alert Resolutions
- Scan
- Pre-Edit Load, Edit, Error Check and Load to Master



- Score
Load to Warehouse
- Generation of Data File(s)
- Publish Aggregate and Student Reports (Print, Generate CD and/or Generate Electronic Output)

2. Scanning Rules:

- The Contractor must process all answer documents containing a grid value for at least one item (e.g., student demographic, interest inventory or item response fields).
- If no name is gridded on the answer document and no Pre-ID label is provided, the Contractor must score the answer document. BAA may be able to identify the student upon data file receipt.
- All answer documents received under a contract header must be scanned under that grade regardless of the grade indicated on the Pre-ID label, gridded by the student, or written on the header. All EXPLORE answer documents must be scored as Grade eight and all PLAN answer documents must be scored as Grade 10.

3. Verifying

Before the Answer Document Receipt Deadline (listed in - Michigan EXPLORE-PLAN Milestone Schedule.), **the Contractor must produce, and provide to BAA, a comparison of test materials ordered versus answer documents scored.** BAA will use this list to follow up with schools that have not returned answer documents to ACT.

Scorable Documents Edited for Accurate Scoring

The Contractor must conduct a minimum of two edits prior to loading the answer data into its Master File. In the event the Contractor receives an answer document without a valid Pre-ID student label affixed, the Contractor must expedite processing of grade level for EXPLORE and PLAN by accepting multiple values as grid by students or, in the absence of a gridded value, as described on the school header page.

Database Back-ups and Recovery

The Contractor's Information Security Policy specifically covers expectations and procedures related to personally-identifiable Information such as "electronic information" and "assessment results." The policy is an overview of the Contractor's network and data management team's daily procedures manual. The Contractor must house its databases in a secure networking facility.

Test Security. The State agrees that the individual Michigan districts and schools are responsible for administration of the Assessments set forth in this Contract. The State agrees that ACT may terminate scores of a specific district or school if the assessments are not administered in accordance with all the policies and procedures provided by ACT (Test Administration Manual). In addition, if a school orders EXPLORE/PLAN test booklets in excess of 25% more than the number of test answer sheets scored for any single administration, the parties will exercise due diligence to determine the disposition of the unused test booklets, including but not limited to, requesting return of the unused materials to ACT at ACT expense. The State agrees to fully cooperate with ACT, and facilitate in the event of a test security incident with those individuals involved in the administration or preparation for the assessments ("Administration Staff"). ACT may, in its sole and absolute discretion, cancel scores in cases of testing irregularities, which may include without limitation, use of a compromised test form, falsification by an examinee of his/her identity, impersonation of another examinee (surrogate testing), unusual similarities in the answers of examinees at the same test center, or other indicators that the test scores may not accurately reflect the examinee's level of educational development.

1.030 Roles and Responsibilities

1.031 Contractor Staff, Roles, and Responsibilities

The following is a list of Key Personnel, who will be the single point of contact for the State, school districts, and any systems interfaces:



Name	Program Role	ACT Title
Juan Garcia	Escalation Point	Assistant Vice President Client Outreach and Partnerships Educational Services Iowa City, IA
Marty Mineck	Point of Contact	Director State Partnerships Iowa City, IA
John Carroll	Regional Liaison Program Solutions	Senior Consultant Client Outreach/Program Solutions Midwest Region Educational Services Lansing, Michigan Office
Jennifer Williams	Client Operations Management	Coordinator Client Operations Management Operations and Logistics Iowa City, Iowa
Tracy Drew	Product Manager EXPLORE/PLAN Product Development	Principal Consultant EXPLORE/PLAN Product Development Educational Services Iowa City, Iowa

1.040 Project Plan

1.041 Project Plan Management

The Contractor provided a project management plan, and has identified methods, tools and processes proposed to oversee the project, which addresses issues as they may arise, and keep the appropriate parties apprised of progress and risk associated with successful outcomes. The Contractor must ensure updates/progress reviews, and individual(s) responsible for receiving/reacting to the requested information are properly informed.

1.042 Reports

The Contractor must provide reports to the CCI and all appropriate parties illustrating the plan and timeline for the respective assessment cycle at the beginning of each Kick-Off meeting. The Contractor must then follow up with a revised plan and timeline with any changes noted within five business days after the conclusion of the respective Kick-Off meeting. If anything should arise after that point, the Contractor shall refer to section 1.401.

Standard Reports

1. Report Deliverables

The Contractor must provide the “off-the-shelf” EXPLORE and PLAN reports listed in the following tables:

EXPLORE Report Deliverables

EXPLORE School and Student Reports

Qty	Description
1/student	EXPLORE REPORTING PACKAGE
2/student	EXPLORE STUDENT SCORE REPORT WITH ITEM-RESPONSE (PAPER)
2/student	EXPLORE STUDENT SCORE LABEL
1/student	USING YOUR EXPLORE RESULTS
1/school	EXPLORE STUDENT LIST REPORT (PAPER)
1/school	EXPLORE PROFILE SUMMARY REPORT BY GRADE - SCHOOL (PAPER)
1/school	EXPLORE INTERPRETIVE GUIDE FOR STUDENT AND SCHOOL REPORTS
1/school	EXPLORE ITEM-RESPONSE SUMMARY REPORT BY GRADE - SCHOOL (PAPER)
1/school	EXPLORE ITEM-RESPONSE SUMMARY REPORT INTERPRETIVE GUIDE
1/school	EXPLORE TEST BOOK 04B
1/school	EXPLORE NORMS- SCHOOL
1/school	EXPLORE DATA FILE - SCHOOL (CD)



EXPLORE District Reports

Qty	Description
1/district	EXPLORE REPORTING PACKAGE–DISTRICT (CD)
1/district	EXPLORE PROFILE SUMMARY REPORT BY GRADE - DISTRICT (CD)
1/district	EXPLORE ITEM-RESPONSE SUMMARY REPORT BY GRADE – DISTRICT (CD)
1/district	EXPLORE DATA FILE - DISTRICT (CD)
1/district	EXPLORE NORMS - DISTRICT
1/district	EXPLORE ITEM-RESPONSE SUMMARY REPORT INTERPRETIVE GUIDE
1/district	EXPLORE TEST BOOK 04B
1/school	EXPLORE REPORTING PACKAGE- DISTRICT - SCHOOL LEVEL (CD)
1/school	EXPLORE PROFILE SUMMARY REPORT BY GRADE - SCHOOL (CD)
1/school	EXPLORE ITEM-RESPONSE SUMMARY REPORT BY GRADE - SCHOOL (CD)
1/school	EXPLORE NORMS – SCHOOL

EXPLORE State Reports

Qty	Description
1/state	EXPLORE REPORTING PACKAGE - STATE
1/state	EXPLORE PROFILE SUMMARY REPORT BY GRADE – STATE (CD)
1/state	EXPLORE ITEM-RESPONSE SUMMARY REPORT BY GRADE – STATE (CD)
1/state	EXPLORE DATA FILE – STATE (CD)
1/state	EXPLORE ITEM-RESPONSE SUMMARY REPORT INTERPRETIVE GUIDE
1/state	EXPLORE TEST BOOK 04B
1/district	EXPLORE REPORTING PACKAGE - DISTRICT
1/district	EXPLORE PROFILE SUMMARY REPORT BY GRADE – DISTRICT (CD)
1/district	EXPLORE ITEM-RESPONSE SUMMARY REPORT BY GRADE – DISTRICT (CD)
1/district	EXPLORE NORMS- DISTRICT
1/school	EXPLORE REPORTING PACKAGE- SCHOOL
1/school	EXPLORE PROFILE SUMMARY REPORT BY GRADE – SCHOOL (CD)
1/school	EXPLORE ITEM-RESPONSE SUMMARY REPORT BY GRADE – SCHOOL (CD)
1/school	EXPLORE NORMS - SCHOOL

PLAN Report Deliverables

PLAN School and Student Reports

Qty	Description
1/student	PLAN REPORTING PACKAGE
2/student	PLAN STUDENT SCORE REPORT WITH ITEM-RESPONSE (PAPER)
2/student	PLAN STUDENT SCORE LABEL
1/student	USING YOUR PLAN RESULTS
1/school	PLAN STUDENT LIST REPORT (PAPER)
1/school	PLAN PROFILE SUMMARY REPORT BY GRADE - SCHOOL (PAPER)
1/school	PLAN INTERPRETIVE GUIDE FOR STUDENT AND SCHOOL REPORTS
1/school	PLAN ITEM-RESPONSE SUMMARY REPORT BY GRADE - SCHOOL (PAPER)
1/school	PLAN ITEM-RESPONSE SUMMARY REPORT INTERPRETIVE GUIDE
1/school	PLAN TEST BOOK 31B
1/school	PLAN NORMS- SCHOOL
1/school	PLAN DATA FILE - SCHOOL (CD)



PLAN District Reports

Qty	Description
1/district	PLAN REPORTING PACKAGE–DISTRICT (CD)
1/district	PLAN PROFILE SUMMARY REPORT BY GRADE - DISTRICT (CD)
1/district	PLAN ITEM-RESPONSE SUMMARY REPORT BY GRADE - DISTRICT (CD)
1/district	PLAN DATA FILE - DISTRICT (CD)
1/district	PLAN NORMS - DISTRICT
1/district	PLAN ITEM-RESPONSE SUMMARY REPORT INTERPRETIVE GUIDE
1/district	PLAN TEST BOOK 31B
1/school	PLAN REPORTING PACKAGE– DISTRICT -SCHOOL LEVEL (CD)
1/school	PLAN PROFILE SUMMARY REPORT BY GRADE - SCHOOL (CD)
1/school	PLAN ITEM-RESPONSE SUMMARY REPORT BY GRADE - SCHOOL (CD)
1/school	PLAN NORMS – SCHOOL

PLAN State Reports

Qty	Description
1/state	PLAN REPORTING PACKAGE - STATE
1/state	PLAN PROFILE SUMMARY REPORT BY GRADE - STATE (CD)
1/state	PLAN ITEM-RESPONSE SUMMARY REPORT BY GRADE - STATE (CD)
1/state	PLAN DATA FILE - STATE (CD)
1/state	PLAN ITEM-RESPONSE SUMMARY REPORT INTERPRETIVE GUIDE
1/state	PLAN TEST BOOK 31B
1/district	PLAN REPORTING PACKAGE - DISTRICT
1/district	PLAN PROFILE SUMMARY REPORT BY GRADE - DISTRICT (CD)
1/district	PLAN ITEM-RESPONSE SUMMARY REPORT BY GRADE - DISTRICT (CD)
1/district	PLAN NORMS - DISTRICT
1/school	PLAN REPORTING PACKAGE- SCHOOL
1/school	PLAN PROFILE SUMMARY REPORT BY GRADE - SCHOOL (CD)
1/school	PLAN ITEM-RESPONSE SUMMARY REPORT BY GRADE - SCHOOL (CD)
1/school	PLAN NORMS- SCHOOL

Report access is as follows:

- Schools must receive data for their students and school only.
- Districts must receive aggregate data for the district as well as data for all their schools.
- BAA must receive aggregate state-level data, plus data for all of the districts and schools.

2. Report Delivery Schedule

The Contractor must produce and deliver EXPLORE and PLAN reports in accordance with the schedule in Appendix G – Michigan EXPLORE-PLAN Milestone Schedule. There are separate delivery timeframes for school, district, and State level reports. Delivery will follow the Contractor’s time frames for generating standard “off-the-shelf” reports, which are determined largely by the testing administration window and final Answer Document Receipt Deadline.

3. Report Delivery Contacts

The Contractor must ship EXPLORE and PLAN reports as follows:

- Student and school reports must be shipped to the location selected by the ordering entity in the test materials order. Reports can be shipped to the schools or to the districts. This has two benefits: 1) districts will avoid incurring additional shipping charges (the Contractor’s standard process does not include transportation of reports from the districts to the schools); and 2) schools can begin using the results sooner. If BAA elects to have student and school reports shipped to the districts, the school and student reports will be packaged by school. Districts will disseminate reports to schools and be responsible for any shipping charges required for transport.
- District reports will be delivered to the district.



- State reports will be delivered to the BAA.

4. Important Notes

1) Only answer documents returned by the Answer Document Receipt Deadline (identified in - Michigan EXPLORE-PLAN Milestone Schedule.) will be included in aggregate district and State reports.

2) The Contractor must encrypt and password-protect the student data file CDs that contain personally identifying information (PII). The Contractor must include, in the delivery, instructions for accessing the data and exporting it to MS Excel.

Data Files

The Contractor must provide standard data files for BAA coming out of the EXPLORE / PLAN Testing – See Appendix D – Student Record Layouts. The data files must include Michigan's UIC and Barcode for those records in which a Pre-ID record was received and barcode label affixed by the school.

All data used to generate the standard reports must be included in the data files, including the UIC and barcode.

If no student name is gridded on the answer document and no Pre-ID label is provided, the Contractor must score the answer document. BAA may be able to identify the student upon data file receipt.

Interpretative Guides

Interpretive guides for EXPLORE and PLAN must be provided to every student and school to assist in interpreting the test results. All interpretive guides are easy-to-read, informative to the respective parties' needs and interests, and provide action steps on how the test results can be used to further their work.

The Contractor must include the following standard "off-the-shelf" materials with our EXPLORE and PLAN report deliveries:

1. Using Your Results (one per student)
2. Interpretive Guide For Student and School Reports (one per school)
3. Item-Response Summary Report Interpretive Guide (one per school, district, and state)

1.050 Acceptance

1.051 Criteria

The following criteria will be used by the State to determine Acceptance of the Services or Deliverables provided under this Contract:

The acceptance criteria for the services and deliverables provided under this Contract must meet the report structures as identified, and must be based on accurate scored assessment results that adhere to a Contractual request of the statement of work. At a minimum, only those assessments which have valid scores that meet the requirements as outlined within the statement of work will be accepted.

The Contractor's standard EXPLORE/PLAN reporting criteria include:

- The Contractor must scan all answer documents received.
- BAA will be invoiced for all answer documents scanned, including those without a valid composite score.
- If a student does not have a valid composite score, their data must NOT be included on the Profile Summary Report. This data must be included on the student data file.
- BAA has the option to configure reports for the following. BAA will provide a decision by the final requirements due date listed in the Michigan EXPLORE-PLAN Milestone Schedule.
 - 1) Student Score Report: a) include or exclude school norms; b) only include students testing during a set date range.



- 2) Profile Summary Report: a) include or exclude list of schools; b) include presentation packet trends for one through three years; c) include or exclude early intervention rosters (available at school and district levels only); and d) include or exclude students testing with extended time. These options can be selected at the reporting level (school, district, and stated) unless noted.
- 3) Item-Response Summary Report: a) include or exclude time extended.
- 4) Data File: a) include or exclude school norms; b) include or exclude district norms.

1.052 Final Acceptance

Final acceptance will be based upon accurately scored assessment results that meet the requirements as noted in the statement of work.

1.060 Pricing**1.061 Pricing**

See Attachment A.

1.062 Price Term

Prices are firm for the entire length of the Contract.

1.063 Tax Excluded from Price

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

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

1.064 Holdback – Deleted – N/A**1.070 Additional Requirements****1.071 Additional Terms and Conditions specific to this Contract – Deleted – N/A**



Article 2, Terms and Conditions

2.010 Contract Structure and Administration

2.011 Definitions

Capitalized terms used in this Contract (including its Exhibits) shall have the meanings given below, unless the context requires otherwise:

- (a) "Days" means calendar days unless otherwise specified.
- (b) "24x7x365" means 24 hours a day, seven days a week, and 365 days a year (including the 366th day in a leap year).
- (c) "Additional Service" means any Services/Deliverables within the scope of this 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. "Additional Service" does not include New Work.
- (d) Deleted N/A.
- (e) "Audit Period" see **Section 2.111**.
- (f) "Business Day," whether capitalized or not, will 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.
- (g) "Incident" means any interruption in Services.
- (h) "Business Critical" means any function identified in any Statement of Work as Business Critical.
- (i) "Deliverable" means physical goods and/or commodities as required or identified by a Statement of Work
- (j) "Key Personnel" means any Personnel designated in **Section 1.201**.
- (k) "New Work" means any Services/Deliverables outside the scope of this 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. "New Work" does not include Additional Service.
- (l) "Services" means any function performed for the benefit of the State, as set forth in this Contract.
- (m) "State Location" means any physical location where the State performs work. State Location may include state-owned, leased, or rented space.
- (n) "Subcontractor" means a company Contractor delegates performance of a substantial portion of the Services to, but does not include independent contractors engaged by Contractor solely in a staff augmentation role, such staff augmentation role includes, but is not limited to, item writers, essay scorers, printers, shippers, common carriers, suppliers, individuals or entities providing similar or related services or other de minimus roles.
- (o) "Work in Process" means a Deliverable that has been partially prepared, but has not been presented to the State for Approval.

2.012 Attachments and Exhibits

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

2.013 Statements of Work

- (a) 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 will not be obliged or authorized to commence any work to implement a Statement of Work until authorized via a PO issued against this Contract, or an amendment to this Contract (**see Section 2.106**). Contractor shall perform in accordance with this Contract, including the Statements of Work/Purchase Orders executed under it.
- (b) Unless otherwise agreed by the parties, each Statement of Work (as defined in Article 1) will include, or incorporate by reference to the appropriate Article 1 Attachment containing, the following information:
 - a description of the Services to be performed by Contractor under the Statement of Work;
 - a project schedule (including the commencement and completion dates for all tasks, subtasks (for all projects of sufficient duration and complexity to warrant sub task breakdown), and Deliverables;
 - a list of the Deliverables to be provided, if any, including any particular specifications and acceptance criteria for such Deliverables, and the dates on which the Deliverables are scheduled to be completed and delivered to the State;



- all Deliverable price schedules and other charges associated with the Statement of Work, the overall fixed price for such Statement of Work and any other appropriate pricing and payment terms;
- a specification of Contractor's and the State's respective performance responsibilities with respect to the performance or completion of all tasks, subtasks and Deliverables;
- a listing of any Key Personnel of Contractor and/or its Subcontractors for that Statement of Work and any future Statements of Work;
- any other information or provisions the parties agree to include.

(c) Deleted N/A.

(d) The initial Statements of Work, as of the Effective Date, are attached to this Contract.

2.014 Issuing Office

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

Lance Kingsbury, Acting Buyer Manager
Services Division - Procurement
Department of Technology, Management and Budget
Phone: 517-241-3768
Fax: 517-335-0046
Email: kingsburyl@michigan.gov

2.015 Contract Compliance Inspector (CCI)

Upon receipt at Purchasing Operations of the properly executed Contract, it is anticipated that the Chief Procurement Officer of DTMB-Procurement, in consultation with MDE, will direct that the person named below, or any other person so designated, be authorized to monitor and coordinate the activities for this Contract on a day-to-day basis during its term. However, monitoring of this Contract implies **no authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions and specifications of such Contract as that authority is retained by Purchasing Operations.** The CCI for this Contract is:

Douglas Collier
Contract and Finance Manager
Office of Assessment Business Operations
Michigan Department of Education
Phone: 517-241-4431
Email: collierd1@michigan.gov
www.michigan.gov/BAA

2.016 Project Manager

The following individual will oversee the project:

James A. Griffiths
Manager, Assessment Administration & Reporting
Office of Standards & Assessment
Michigan Department of Education
John A. Hannah Building
P.O. Box 30008
Lansing, Michigan 48909
Phone: 517-373-4332 (direct to desk)
Toll Free Phone: 877-560-8378
Fax: 517-335-1186
Email: GriffithsJ@michigan.gov

2.020 Contract Objectives/Scope/Background**2.021 Background – Deleted N/A****2.022 Purpose – Deleted N/A****2.023 Objectives and Scope – Deleted N/A****2.024 Interpretation – Deleted N/A****2.025 Form, Function, and Utility – Deleted N/A**2.030 Legal Effect and Term**2.031 Legal Effect**

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

2.032 Contract Term

This Contract is for a period of 19 months beginning approximately April 18th through September 30, 2013. All outstanding Purchase Orders will also expire upon the termination (cancellation for any of the reasons listed in 2.210) of this Contract, unless otherwise extended pursuant to this Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of this Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

2.033 Renewal(s)

This Contract may be renewed in writing by mutual agreement of the parties not less than 30 days before its expiration. This Contract may be renewed for up to one additional, one year period. Successful completion of negotiations surrounding the terms of the extension, will be a pre-requisite for the exercise of any option year.

2.040 Contractor Personnel**2.041 Contractor Personnel****(a) Personnel Qualifications.**

Except as set forth in **Section 2.011(n)**, all persons assigned by Contractor to the performance of Services under the Contract must be employees of the 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. State understands that the relationship between Contractor and Subcontractor is an independent contractor relationship.

(b) Key Personnel

- (i) In discharging its obligations under the Contract, Contractor has provided the named Key Personnel set forth in Section 1.031..
- (ii) Except as set forth in this Contract, Key Personnel must be assigned to the Project for its duration in the applicable Statement of Work.
- (iii) Before reassigning an individual to any Key Personnel position, Contractor must notify the State of the proposed assignment, must introduce the individual to the appropriate State representatives, and must provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State will provide a written explanation including reasonable detail outlining the reasons for the rejection. Additionally, the State's request will be based on legitimate, good-faith reasons. Proposed alternative for the individual denied, will be fully qualified for the position.



- (iv) Contractor must not remove any Key Personnel from their assigned roles or this Contract without the prior written consent of the State. If the Contractor does remove Key Personnel without the prior written consent of the State, it will be considered an unauthorized removal ("Unauthorized Removal"). It will not be considered an Unauthorized Removal if Key Personnel must be replaced for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation, or termination of the Key Personnel's employment. It will not be considered an Unauthorized Removal if Key Personnel must be replaced 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, will 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 this Contract, in respect of which the State may elect to exercise its rights under **Section 2.210**.

(c) **Re-assignment of non-Key Personnel.**

Prior to re-deploying to other projects, at the completion of their assigned tasks on the Project, teams of its non-Key Personnel who are performing Services on-site at State facilities or who are otherwise dedicated primarily to the Project, Contractor must give the State at least 10 Business Day notice of the proposed re-deployment to give the State an opportunity to object to the re-deployment if the State reasonably believes such team's Contract responsibilities are not likely to be completed and approved by the State prior to the proposed date of re-deployment.

(d) **Re-assignment of Personnel at the State's Request.**

The State reserves the right to require the removal from the Project if Contractor personnel found, in the judgment of the State, to be unacceptable. The State's request will be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request will be based on legitimate, good-faith reasons. Replacement personnel for the removed person will 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 such incident with removed personnel results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable Service Level Agreements (SLAs) for the affected Service will be for a time as agreed to by the parties.

(e) **Staffing Levels.**

- (i) All staff requirements not specified in the applicable Statement of Work or State-approved project plan as State personnel will be supplied by Contractor.
- (ii) Contractor must provide sufficient personnel resources for the completion of Contract tasks indicated in Contractor's project plan approved by the State. If the level of personnel resources is insufficient to complete any Contractor tasks in accordance with this Contract time schedule as demonstrated by Contractor's failure to meet mutually agreed to time schedules, Contractor must promptly add additional qualified personnel resources to the performance of the affected tasks, at no additional charge to the State, in an amount sufficient to complete performance of Contractor's tasks in accordance with this Contract's time schedule.

(f) **Personnel Turnover.**

The Parties agree that it is in their best interests to keep the turnover rate of employees of Contractor and its Subcontractors who are performing the Services to a reasonable minimum.

2.042 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.

2.043 Cooperation with Third Parties

Contractor agrees to cause its personnel and the personnel of any its Subcontractors or its independent contractors to cooperate with the State and its agents and other contractors including the State's Quality Assurance personnel, and, as reasonably requested by the State, to provide to the State's agents and other contractors with reasonable access to Contractor's Project personnel, systems and facilities to the extent they relate to activities specifically associated with this Contract and will not interfere or jeopardize the safety or operation of the systems or facilities and provided Contractor receives reasonable prior written notice of such request and all State agents and other contractors execute Contractor's standard Nondisclosure and Confidentiality Agreement, except as required by the Freedom of Information Act (Act 442 of 1976). The State acknowledges that Contractor's time schedule for this Contract is very specific and agrees not to unnecessarily or unreasonably interfere with, delay, or otherwise impeded Contractor's performance under this Contract with such requests for access.

**2.044 Subcontracting by Contractor**

- (a) Contractor will have full responsibility for the performance and completion of all of the Services and Deliverables. The State will consider Contractor to be the sole point of contact with regard to all contractual matters under this Contract, including payment of any and all charges for Services and Deliverables.
- (b) Except as set forth in **Section 2.011(n)**, Contractor may not subcontract any obligations under this Contract without the prior written content of the DTMB-Procurement. Notwithstanding anything to the contrary in the preceding sentence, Contractor will not require the prior consent to subcontract any portion of the work covered under this Contract to : a) any Subcontractor specifically mentioned in Contractor's Proposals b) any individual required to fill temporary staffing requirements; c) any Subcontractor whose performance constitutes a de minimus contribution to the Party's overall performance of its contractual obligations; d) item writers, essay scorers, printers, shippers, suppliers or individuals or entities providing similar or related services (such as NCS Pearson, Inc.) or e) information technology consultants and software developers, quality assurance personnel, psychometricians and technical writers, or other parties providing non-State specific services.
- (c) In any subcontracts entered into by Contractor for the performance of the Services. Contractor must require the Subcontractor, to the extent of the Services to be performed by the Subcontractor, to be bound to Contractor by the terms of this Contract and to assume toward Contractor all of the obligations and responsibilities that Contractor, by this Contract, assumes toward the State. The State reserves the right to receive copies of and review all subcontracts, although Contractor may delete or mask any proprietary information, including pricing, contained in such contracts before providing them to the State. The management of any of its Subcontractors or independent contractors will be the responsibility of Contractor, and Contractor will remain responsible for the performance of its Subcontractors or independent contractors to the same extent as if Contractor had not subcontracted such performance. Contractor make all payments to its Subcontractors or independent contractors or suppliers of Contractor. Except as otherwise agreed in writing by the State and Contractor, the State will not be obligated to direct payments for the Services other than to Contractor. The State's written approval of any Subcontractor engaged by Contractor to perform any obligation under the Contract will not relieve Contractor of any obligations or performance required under this Contract.
- (d) Except where specifically approved in writing by the State on a case-by-case basis, Contractor must flow down the obligations in **Sections 2.040, 2.110, 2.150, 2.160, 2.171(c), 2.172(b), 2.180, 2.260, 2.276, 2.297** in all of its agreements with any Subcontractors.
- (e) The Contractor must select Subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of this Contract.

2.045 Contractor Responsibility for Personnel

Contractor will 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.

2.050 State Standards**2.051 Existing Technology Standards**

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

2.052 PM Methodology Standards

The State has adopted a standard documented Project Management Methodology (PMM) for use on all Information Technology (IT) based projects. See the State's PMM website at <http://www.michigan.gov/projectmanagement>.

The Contractor must use the State's PPM to manage this Contract. If the Contractor requires training on the PMM, those costs shall be the responsibility of the Contractor, unless otherwise stated.

2.053 Adherence to Portal Technology Tools

The State has adopted the following tools for its Portal Technology development efforts:

- Vignette Content Management and personalization Tool
- Inktomi Search Engine
- E-Pay Payment Processing Module
- Websphere Commerce Suite for e-Store applications



Unless otherwise stated, Contractor must use the Portal Technology Tools to implement web content management and deployment efforts. Tools used for web-based application development must work in conjunction with Vignette and Inktomi. The interaction with Vignette and Inktomi must be coordinated with DTMB, Enterprise Application Services Office, e-Michigan Web Development team. Contractors that are compelled to use alternate tools must have received an exception from DTMB, Enterprise Application Services Office, e-Michigan Web Development team, before this Contract is effective.

2.054 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/dit>. 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.

2.060 Deliverables

2.061 Ordering

Any Services/Deliverables to be furnished under this Contract will be ordered by issuance of written Purchase Orders/Blanket Purchase Order by the State after approval by the Contract Administrator or his/her designee. All orders are subject to the terms and conditions of this Contract. In the event of conflict between an order and this Contract, this Contract will take precedence as stated in **Section 2.293**. In no event will any additional terms and conditions contained on a Purchase Order/Blanket Purchase Order be applicable, unless specifically contained in that Purchase Order/Blanket Purchase Order's accompanying Statement of Work.

2.062 Software – Deleted N/A

2.063 Hardware – Deleted N/A

2.064 Equipment to be New and Prohibited Products – Deleted N/A

2.070 Performance

2.071 Performance, In General

The State engages Contractor to execute this Contract and perform the Services/provide the Deliverables, and Contractor undertakes to execute and complete this Contract in its entirety in accordance with the terms and conditions of this Contract and with the participation of State representatives as specified in this Contract.

2.072 Time of Performance

- (a) Contractor must use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables in accordance with 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 2.072(a)**, Contractor must notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and, in such event, must inform the State of the projected actual delivery date.
- (c) If Contractor believes that a delay in performance by the State has caused or will cause Contractor to be unable to perform its obligations in accordance with specified Contract time periods, Contractor must notify the State in a timely manner and must use commercially reasonable efforts to perform its obligations. Contractor will not be in default for a delay in performance or liable for any damages, costs or expenses (liquidated or other) to the extent such delay is caused by the State, its contractors or agents, or other third parties not within Contractor's control.

2.073 Liquidated Damages – Deleted N/A

**2.074 Bankruptcy**

If Contractor files for protection under the bankruptcy laws, or if an involuntary petition is to be filed against Contractor and not removed within 30 days, or if the Contractor becomes insolvent, be adjudicated bankrupt, or if it should make a general assignment for the benefit of creditors, or if a receiver is to be appointed due to its insolvency, and Contractor and/or its affiliates are unable to provide reasonable assurances that Contractor and/or its affiliates can deliver the services provided herein, the State may, without prejudice to any other right or remedy, terminate this Contract, in whole or in part, and, provided Contractor has been paid for all work approved prior to termination at the State's option, may take possession of the "Work in Process" and finish such Works in Process by whatever appropriate method the State may deem expedient. To secure the State's progress payments before the delivery of any services or materials required for the execution of Contractor's obligations hereunder, and any work which Contractor may subcontract in the support of the performance of its obligations hereunder, title shall vest in the State to the extent the State has made progress payments hereunder.

2.075 Time is of the Essence – Deleted N/A**2.076 Service Level Agreements (SLAs) – Deleted N/A**

2.080 Delivery and Acceptance of Deliverables – Deleted N/A

2.090 Financial

2.091 Pricing**(a) Fixed Prices for Services/Deliverables**

Each Statement of Work/PO issued under this Contract will 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. To the extent the parties agree that certain specific Services will be provided on a time and materials basis. The State may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by this Contract Administrator, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.

(b) 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 will negotiate an equitable reduction in Contractor's charges under such Statement of Work commensurate with the reduction in scope.

(c) Services/Deliverables Covered

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

(d) Labor Rates – Deleted N/A**2.092 Invoicing and Payment Procedures and Terms****(a) Invoicing and Payment – In General**

- (i) Each Statement of Work issued under this Contract will 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.
- (ii) Each Contractor invoice must show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements. 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 2.094**.
- (iii) Correct invoices will 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.

(b) Taxes

The State is exempt from Federal Excise Tax, State and Local Sales Taxes, and Use Tax with respect to the sale to and use by it of tangible personal property. Such taxes will not be included in these Contract prices as long as the State maintains such exemptions. Copies of all tax exemption certificates shall be supplied to Contractor, if requested.



(c) Out-of-Pocket Expenses

Contractor acknowledges that the out-of-pocket expenses that Contractor expects to incur in performing the Services/ providing the Deliverables (such as, but not limited to, travel and lodging, document reproduction and shipping, and long distance telephone) are included in Contractor's fixed price for each Statement of Work. Accordingly, Contractor's out-of-pocket expenses are not separately reimbursable by the State unless, on a case-by-case basis for unusual expenses, the State has agreed in advance and in writing to reimburse Contractor for such an expense at the State's current travel reimbursement rates. See www.michigan.gov/DTMB for current rates.

(d) Pro-ration

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

(e) 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.

(f) Final Payment

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

2.093 State Funding Obligation

The State's obligation under this Contract is payable only and solely from funds appropriated for the purpose of this Contract. Contractor acknowledges and agrees that all funds for payments after the end of the current fiscal year are subject to the availability of a legislative appropriation for the purpose of this Contract. Events of non-appropriation are addressed further in **Section 2.210** of this Contract.

2.094 Holdback – Deleted N/A

2.095 Electronic Payment Availability

Public Act 533 of 2004 requires that payments under this Contract be processed by electronic funds transfer (EFT). Contractor is required to register to receive payments by EFT at the Contract & Payment Express website (www.cpexpress.state.mi.us).

2.100 Contract Management

2.101 Contract Management Responsibility

- (a) Contractor will 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 will 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 Article 1, (Project Plan) is likely to delay the timely achievement of any Contract tasks.
- (b) The Services/Deliverables must be provided by the Contractor either directly or through its affiliates, subsidiaries, Subcontractors, resellers, or others as referenced in **Section 2.011(n)**. Regardless of the entity providing the Service/Deliverable, the Contractor will act as a single point of contact coordinating these entities to meet the State's need for Services/Deliverables. Nothing in this Contract, however, will be construed to authorize or require any party to violate any applicable law or regulation in its performance of this Contract.

2.102 Problem and Contract Management Procedures

Problem Management and Contract Management procedures will be governed by this Contract and the applicable Statements of Work.

2.103 Reports and Meetings – Deleted N/A

**2.104 System Changes**

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

2.105 Deleted N/A**2.106 Change Requests**

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

If the State requests or directs the Contractor to perform any Services/Deliverables that are outside the scope of the Contractor's responsibilities under this Contract ("New Work"), the Contractor must notify the State promptly, and before commencing performance of the requested activities, that it believes the requested activities are New Work. If the Contractor fails to notify the State before commencing performance of the requested activities, any such activities performed before notice is given by the Contractor, it will be conclusively considered to be in-scope Services/Deliverables, 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 this 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 must 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 will 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 will 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 will be subject to competitive bidding based upon the specifications.

Process for Change Requests:

- (i) **State Requests**
If the State should require Contractor to perform New Work, Additional Services or make changes to the Services that would affect this Contract's completion schedule or the amount of compensation due Contractor (a "Change"), the State will submit a written request for Contractor to furnish a proposal for carrying out the requested Change (a "Change Request").
- (ii) **Contractor Recommendations**
Contractor will be entitled to propose a Change to the State, on its own initiative, should it be of the opinion that this would benefit this Contract.
- (iii) **Change Request**
Upon receipt of a Change Request or on its own initiative, Contractor must examine the implications of the requested Change on the technical specifications, Contract schedule and price of the Deliverables and Services and must submit to the State without undue delay a written proposal for carrying out the Change. Contractor's proposal must 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 will 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 will communicate its opinion to the State but will nevertheless carry out the Change as specified in the written proposal if the State directs it to do so.
- (iv) **Contract Change Notice**
By giving Contractor written notice within a reasonable time, the State will 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 will 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").
- (iv) **Change Execution**
No proposed Change will be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by DTMB.



- (vi) If the State requests or directs Contractor to perform any activities that Contractor believes constitute a Change, Contractor must notify the State that it believes the requested activities are a Change prior to commencing the performance of the requested activities. If Contractor fails to so notify the State prior to commencing performance of the requested activities, such activities will be considered to be performed gratuitously by Contractor, and Contractor will not have any right thereafter to assert any claim for additional compensation or time for the performance of such activities. If Contractor commences performance of gratuitous services outside the scope of this Contract and subsequently elects to stop performing such out-of-scope services, Contractor must, at the request of the State, back out or reverse any changes resulting from such performance that would adversely affect this Contract.

2.107 Management Tools – Deleted N/A

2.110 Records and Inspections

2.111 Records and Inspections

- (a) Inspection of Work Performed. The State's authorized representatives will, at all reasonable times and with 10 business days prior written request, have the right to enter Contractor's premises, or any other places, where the Services are being performed, and will 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 will be allowed to inspect, monitor, or otherwise evaluate the work being performed and to the extent that such access will not reasonably interfere or jeopardize the safety or operation of the systems, facilities, or any secure test environment. Contractor must provide all reasonable facilities and assistance for the State's representatives.

Notwithstanding the preceding paragraph, the State will only have access to or inspect, monitor, or otherwise evaluate the Contractor processes that directly impact the validity and accuracy of the- scores, including any and all financial records relating to the billing of this Contract.

- (b) Examination of Records. Contractor agrees that the State, including its duly authorized representatives, until the expiration of seven years following the creation of the material (collectively, the "Audit Period"), will, upon 20 days prior written notice, have access to and the right to examine and copy during normal business hours, any of Contractor's books, records, documents, and papers pertinent to establishing Contractor's invoices or billing statements in compliance with this Contract and with applicable laws and rules, including the State's procurement rules, regulations, and procedures, and actual performance of this Contract for the purpose of conducting an audit, examination, excerpt and/or transcription but the State shall not have access to any information deemed confidential to Contractor to the extent such access would require such confidential information to become publicly available. This provision also applies to the books, records, accounts, documents, and papers, in print or electronic form, of any parent, affiliated or subsidiary organization of Contractor, or any Subcontractor of Contractor performing services in connection with this Contract. Such audit of Contractor or its Subcontractors will take place at Contractor's or Subcontractor's headquarters, respectively, at State's sole cost and expense except as identified in **Section 2.112(b)**.
- (c) Retention of Records. Contractor must maintain, at least until the end of the Audit Period, all pertinent financial and accounting records (including time sheets and payroll records, and information pertaining to this Contract and to the Services, equipment, and commodities provided under this Contract) pertaining to the invoices or billing statements under this Contract in accordance with generally accepted accounting principles and other procedures specified in this Section. Financial and accounting records shall be made available, upon reasonable prior written request, to the State at any time during normal business hours during the Audit Period at Contractor's or its Subcontractors' headquarters, respectively, at State's sole cost and expense except as identified in **Section 2.112(b)**. If an audit, litigation, or other action involving Contractor's records is initiated before the end of the Audit Period, the records must be retained until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.
- (d) Audit Resolution. If necessary, the Contractor and the State will meet to review each audit report promptly after issuance. The Contractor must respond to each audit report in writing within 30 days from receipt of such report, unless a shorter response time is agreed to by the parties. The Contractor and the State will develop, agree upon and monitor an action plan to promptly address and resolve any deficiencies, concerns, and/or recommendations in such audit report.

**2.112 Errors**

- (a) If the audit demonstrates any material errors in the statements provided to the State, then the material amount in error will 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 quarterly statements. If a balance remains after four quarterly statements, then the remaining amount will be due as a payment or refund within 45 days of the last quarterly statement that the balance appeared on or termination of this contract, whichever is earlier.
- (b) In addition to other available remedies, if 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 State Responsibilities**2.121 State Performance Obligations**

- (a) **Equipment and Other Resources.** To facilitate Contractor's performance of the Services/Deliverables, the State will provide to Contractor such equipment and resources as identified in the Statements of Work or other Contract Exhibits as items to be provided by the State.
- (b) **Facilities.** The State will designate space as long as it is available and as provided in the Statement of Work, to house Contractor's personnel whom the parties agree will perform the Services/Deliverables at State facilities (collectively, the "State Facilities"). Contractor will have reasonable access to, and unless agreed otherwise by the parties in writing, will observe and comply with all rules and regulations relating to, each of the State Facilities (including hours of operation) used by Contractor in the course of providing the Services. Contractor agrees that it will not, without the prior written consent of the State, use any State Facilities or access any State information systems provided for Contractor's use, or to which Contractor otherwise gains access in the course of performing the Services, for any purpose other than providing the Services to the State.
- (c) **Return.** Contractor will be responsible for returning to the State any State-furnished equipment, facilities and other resources when no longer required for this Contract in the same condition as when provided by the State, reasonable wear and tear excepted.
- (d) Except as otherwise provided in **Section 2.220**, the State's failure to perform its responsibilities as set forth in this Contract will not be deemed to be grounds for termination by Contractor. However, Contractor will not be liable for any default or delay in the performance of its obligations under this Contract to the extent such default or delay is caused by nonperformance of the State's obligations under this Contract, provided Contractor provides the State with reasonable written notice of such nonperformance and Contractor uses commercially reasonable efforts to perform notwithstanding the State's failure to perform. In addition, if the State's nonperformance of its responsibilities under this Contract materially increases the time required for Contractor's performance or Contractor's cost of performance, Contractor shall be entitled to seek an equitable extension via the Change Request process described in **Section 2.106**.

2.130 Security**2.131 Background Checks**

The Contractor must perform background checks on Contractor's (including Subcontractor) personnel proposed to have access to State facilities and the electronic exchange systems between the State and Contractor. Contractor must use the background check results to determine Contractor personnel eligibility for working within State facilities and accessing the electronic exchange system between the State and Contractor. Contractor must provide the State with confirmation that background checks have been completed for the appropriate Contractor personnel.

All Contractor (including Subcontractor) personnel proposed to have access to State facilities and the electronic exchange systems between the State and Contractor will also be expected to comply with the State's security and acceptable use policies for State IT equipment and resources. See www.michigan.gov/dtmb. 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 State will provide an acceptance form to the Contractor and then the Contractor must present these documents to the prospective employee before the Contractor presents the individual to the State as a proposed resource. Contractor staff will be expected to comply with all Physical Security procedures in place within the facilities where they are working.

2.132 PCI Data Security Requirements – Deleted N/A



2.140 Deleted N/A

2.150 Confidentiality

2.151 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").

2.152 Confidentiality

Contractor and the State each acknowledge that the other possesses, and will continue to possess, confidential information that has been developed or received by it. As used in this Section, "Confidential Information" of Contractor will 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. All assessment materials will also be handled as confidential materials and may have copyright restrictions printed on the materials instead of confidentiality notices. "Confidential Information" of the State will mean any information which is retained in confidence by the State (or otherwise required to be held in confidence by the State pursuant to applicable federal, State and local laws and regulations) or which, in the case of tangible materials provided to Contractor by the State pursuant to its performance under this Contract, is marked as confidential, proprietary or with a similar designation by the State. In the case of information of either Contractor or the State "Confidential Information" will exclude any information (including this Contract) that is publicly available pursuant to the Michigan FOIA.

2.153 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.

2.154 Exclusions

Notwithstanding the foregoing, the provisions of this Section will not apply to any particular information which the State or Contractor can demonstrate (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving party; (iii) was in the possession of the receiving party at the time of disclosure to it without an obligation of confidentiality; (iv) was received after disclosure to it from a third party who had a lawful right to disclose such 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 will not apply to any particular Confidential Information to the extent the receiving party is required by law to disclose such 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 such disclosure as reasonably requested by the furnishing party.

2.155 No Implied Rights

Nothing contained in this Section will 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.

**2.156 Remedies**

Each party acknowledges that, if it breaches (or attempts or threatens to breach) its obligations under **Section 2.150**, the other party may be irreparably harmed. Accordingly, if a court of competent jurisdiction should find that a party has breached (or attempted or threatened to breach) any such obligations, the non-breaching party shall be entitled to seek an injunction preventing such breach (or attempted or threatened breach).

2.157 Security Breach Notification

In the event of a breach of this Section, Contractor must 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 must report to the State in writing any use or disclosure of Confidential Information, whether suspected or actual, other than as provided for by this Contract within 10 days of becoming aware of such use or disclosure or such shorter time period as is reasonable under the circumstances.

2.158 Survival

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

2.159 Destruction of Confidential Information

Promptly upon termination or cancellation of this Contract for any reason, Contractor must certify to the State that Contractor has destroyed all State Confidential Information. Within 10 business days of termination or cancellation of this Contract for any reason, State will immediately return to Contractor all Contractor Confidential Information, except that this provision shall not override or adversely impact the rights of the parties set forth in Section 2.161 and 2.163.

2.160 Proprietary Rights**2.161 Ownership**

Except as specifically provided in this **Section 2.161**, all Deliverables will be owned by the State and will be considered works made for hire by the Contractor for the State. The State will own all United States and international copyrights, trademarks, patents, or other proprietary rights in the Deliverables.

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

Contractor owns the assessments, including all testing materials, documentation, related materials, derivatives and all intellectual property rights therein (collectively, the "Contractor Materials"). State does not acquire any right, title, or interest in or to the Contractor Materials. State will not copy, modify, enhance, reverse engineer, or make any addition to the Contractor Materials. Notwithstanding anything in this Contract to the contrary, Contractor will retain all right, title, and interest in and to all Contractor Materials which will not be considered "Deliverables."

2.162 Source Code Escrow – Deleted N/A**2.163 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 this Contract. Except as otherwise set forth in this **Section 2.163**, Contractor must not use the State's data for any purpose other than providing the Services, nor will any part of the State's data be disclosed, sold, assigned, leased, or otherwise disposed of to the general public or to specific third parties or commercially exploited by or on behalf of Contractor, nor will any employee of Contractor other than those on a strictly need to know basis have access to the State's data. Contractor must not possess or assert any lien or other right against the State's data.



Except as otherwise set forth in this **Section 2.163** without limiting the generality of this Section, Contractor must only use personally identifiable information as strictly necessary to provide the Services and must disclose such information only to its employees who have a strict need to know such information. Contractor must comply at all times with all laws and regulations applicable to such personally identifiable information.

- (b) The State is and will remain the owner of all State-specific data pursuant to this 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 will only use personally identifiable information as strictly necessary to utilize the Services and will disclose such information only to its employees who have a strict need to know such information, except as provided by law. The State will 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.
- (c) The parties acknowledge and agree that Contractor may use and disclose the data collected from the administration of the Plan and Explore assessments, as set forth in Contractor's data usage policies, as amended from time to time. The data usage policies will, at a minimum, allow for the disclosure of student specific data results to each student, their respective school and school district, and the State.

2.164 Ownership of Materials

State and Contractor will continue to own their respective proprietary technologies developed before entering into this 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.

2.165 Standard Software

If applicable and necessary, all Standard Software used in performing the Services will be provided to the State under a separate license agreement between the State and the owner (or authorized licensor) of such software. Standard Software to be licensed to the State is listed in this Contract.

2.166 Pre-existing Materials for Custom Software Deliverables

Neither Contractor nor any of its Subcontractors must not 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.

2.167 General Skills

Notwithstanding anything to the contrary in this Section, each party, its Subcontractors and their personnel be free to use and employ its and their general skills, know-how and expertise, and to use, disclose and employ any generalized ideas, concepts, know-how, methods, techniques or skills gained or learned during the course of performing the Services, so long as it or they acquire and apply the foregoing without disclosure of any confidential or proprietary information of the other party.

2.170 Warranties And Representations

2.171 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) This Contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into this Contract, on behalf of Contractor.
- (c) It is qualified and registered to transact business in all locations where required.
- (d) Neither the Contractor nor any Affiliates, nor any employee of either, has, will have, or will acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any significant/material 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 within two days of becoming aware of any such interest that may be incompatible with the interests of the State.
- (e) Neither Contractor nor any Affiliates, nor any employee of either has accepted or will 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.
 - (f) 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 such Affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.
 - (g) 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.
 - (h) All financial statements, reports, and other information furnished by Contractor to the State 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 such financial statements, reports, other information. Since the respective dates or periods covered by such financial statements, reports, or other information, there have been no material adverse change in the business, properties, financial condition, or results of operations of Contractor.
 - (i) All written information furnished to the State by or behalf of Contractor in connection with this Contract, including its bid, it true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make such information not misleading.
 - (j) 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 such department within the previous five years for the reason that Contractor failed to perform or otherwise breached an obligation of such contract.

2.172 Software Warranties

(a) 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 this Contract) for a period of 90 days. In the event of a breach of this warranty, Contractor must correct the affected Deliverable(s) at no charge to the State, by direction of the CCI.

(b) 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 must use up-to-date commercial virus detection software to detect and remove any viruses from any software prior to delivering it to the State.



(c) 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 will include, at no added cost to the State, design and performance so the State will 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, must include, but is not limited to: data structures (databases, data files, etc.) that provide four-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 four-digit years; and assurance that the year 2000 will be correctly treated as a leap year within all calculation and calendar logic.

(d) 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 must 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 will include a copy of any ownership agreement or license that authorizes the Contractor to use the Third-party Software.

2.173 Equipment Warranty – Deleted N/A

2.174 Physical Media Warranty – Deleted N/A

2.175 Standard Warranties – Deleted N/A

2.176 Consequences For Breach

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

2.180 Insurance

2.181 Liability Insurance

(a) Liability Insurance

The Contractor is required to provide proof of the minimum levels of insurance coverage as indicated below. The purpose of this coverage will be to protect the State from claims which may arise out of or result from the Contractor's performance of services under the terms of this Contract, whether such 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 pursuant to this Contract.

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

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

The insurers selected by Contractor must have an A.M. Best rating of A or better, or as otherwise approved in writing by the State, or if such 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.



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

Before this Contract is signed by both parties or before the purchase order is issued by the State, the Contractor must furnish to the Chief Procurement Officer, certificate(s) of insurance verifying insurance coverage ("Certificates"). The Certificate must be on the standard "accord" form or equivalent. **THIS CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING.** All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) must contain a provision indicating that coverages afforded under the policies WILL 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 Chief Procurement Officer, DTMB. The notice must include this Contract or Purchase Order number affected and be mailed to: Chief Procurement Officer, DTMB, P.O. Box 30026, Lansing, Michigan 48909. Failure to provide evidence of coverage, may, at the State's sole option, result in this Contract's termination.

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
 \$500,000 Fire Damage Limit (any one fire)

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

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

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

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

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

4. Employers liability insurance with the following minimum limits:

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



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

(b) Subcontractors

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) shall 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.

(c) Certificates of Insurance and Other Requirements

Contractor must furnish to DTMB certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). Before this 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 insureds under each commercial general liability and commercial automobile liability policy. In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

Contractor must maintain all required insurance coverage throughout the term of this Contract and any extensions thereto and, in the case of claims-made Commercial General Liability policies, shall 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 will be responsible for all deductibles with regard to such insurance. If Contractor fails to pay any premium for required insurance as specified in this Contract, or if any insurer cancels or significantly reduces any required insurance as specified in this Contract without the State's written consent, at the State's election (but without any obligation to do so) after the State has given Contractor at least 30 days written notice, the State may pay such premium or procure similar insurance coverage from another company or companies; and at the State's election, the State may deduct the entire cost (or part thereof) from any payment due Contractor, or Contractor must pay the entire cost (or any part thereof) upon demand by the State.

2.190 Indemnification

2.191 Indemnification

(a) General Indemnification

To the extent permitted by law, the Contractor will 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.

(b) Code Indemnification

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

(c) Employee Indemnification

In any and all 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 this Contract will 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.



(d) Patent/Copyright Infringement Indemnification

To the extent permitted by law, the Contractor will 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 such 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 such equipment, software, commodity or service, or the use or reproduction of any documentation provided with such 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 shall at the Contractor's sole expense (i) procure for the State the right to continue using the equipment, software, commodity or service or, if such 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 such 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 will have 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; or (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.

2.192 Continuation of Indemnification Obligations

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

2.193 Indemnification Procedures

The procedures set forth below will apply to all indemnity obligations under this Contract:

- (a) After receipt by the State of notice of the action or proceeding involving a claim in respect of which it will seek indemnification, the State will promptly notify Contractor of such claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to notify Contractor will relieve Contractor of its indemnification obligations except to the extent that Contractor can demonstrate damages attributable to such failure. Within 10 days following receipt of written notice from the State relating to any claim, Contractor must notify the State in writing whether Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying Contractor of a claim and prior to the State receiving Contractor's Notice of Election, the State shall be entitled to defend against the claim, at Contractor's expense, and Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during such period.
- (b) If Contractor delivers a Notice of Election relating to any claim: (i) the State will be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in the handling of such claim and to monitor and advise the State about the status and progress of the defense; (ii) Contractor must, at the request of the State, demonstrate to the reasonable satisfaction of the State, Contractor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) Contractor must periodically advise the State about the status and progress of the defense and must obtain the prior written approval of the State before entering into any settlement of such claim or ceasing to defend against such claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State will have the right, at its own expense, to control the defense of that portion of such claim involving the principles of Michigan governmental or public law. Notwithstanding the foregoing, the State may retain control of the defense and settlement of a claim by written notice to Contractor given within 10 days after the State's receipt of Contractor's information requested by the State pursuant to clause (ii) of this paragraph if the State determines that Contractor has failed to demonstrate to the reasonable satisfaction of the State Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State of Michigan, or any of its subdivisions pursuant to this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State pursuant to 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 will have the right to defend the claim in such 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 such reasonable costs and expenses.

2.200 Limits of Liability and Excusable Failure

2.201 Limits of Liability

Neither the Contractor nor the State is liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. Notwithstanding anything to the contrary in this Contract, the Contractor's liability for damages to the State is limited to the amount State has paid Contractor under this Contract. The foregoing limitation of liability does not apply to claims for infringement of United States patent, copyright, trademarks, or trade secrets or to claims for bodily injury or damage to property caused by the gross negligence or willful misconduct of the Contractor.

2.202 Excusable Failure

Notwithstanding anything to the contrary in this Contract, neither party will be liable for any default, damage or delay in the performance of its obligations under this Contract to the extent such default, damage or delay is caused by government regulations or requirements (executive, legislative, judicial, military or otherwise), power or communications (telephone, cellular phone, internet and e-mail) 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 such party; provided such 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.

In such event, the non-performing party will be excused from any further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such party continues to use its commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay and provided further that such party promptly notifies the other party in writing of the inception of the excusable failure occurrence, and also of its abatement or cessation.

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

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

2.203 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.



2.210 Termination/Cancellation by the State

The State may terminate this Contract without further liability or penalty to the State, its departments, divisions, agencies, offices, commissions, officers, agents and employees for any of the following reasons:

2.211 Termination for Cause

- (a) In the event that Contractor breaches any of its material duties or obligations under this Contract (including a Chronic Failure to meet any particular SLA as defined in **Section 2.076**), which are either not capable of or subject to being cured, or are not cured within the time period specified in the written notice of breach provided by the State (such time period not to be less than 30 days), or pose a serious and imminent threat to the health and safety of any person, or the imminent loss, damage or destruction of any real or tangible personal property, the State may, having provided written notice of termination to Contractor, terminate this Contract in whole or in part, for cause, as of the date specified in the notice of termination; provided, however, the State must discharge its obligations under **Section 2.250** before any such termination.
- (b) In the event that this Contract is terminated for cause, in addition to any legal remedies otherwise available to the State by law or equity, Contractor will be responsible for 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 will not be considered by the parties to be consequential, indirect or incidental damages, and will not be excluded by any other terms otherwise included in this Contract, provided such costs are not in excess of 50% more than the prices for such Service/Deliverables provided under this Contract.
- (c) In the event the State chooses to partially terminate this Contract for cause, charges payable under this Contract will be equitably adjusted to reflect those Services/Deliverables that are terminated and the State will 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 will cease on the effective date of the termination.
- (d) In the event this Contract is terminated for cause pursuant to this Section, and it is determined, for any reason, that Contractor was not in breach of this Contract pursuant to the provisions of this section, that termination for cause will be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties will be limited to that otherwise provided in this Contract for a termination for convenience.

2.212 Termination for Convenience

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

2.213 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 will have the right to 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 will give Contractor at least 30 days advance written notice of termination for non-appropriation or unavailability (or such time as is available if the State receives notice of the final decision less than 30 days before the funding cutoff).



- (b) If funding for this Contract is reduced by law, or funds to pay Contractor for the agreed-to level of the Services or production of Deliverables to be provided by Contractor are not appropriated or otherwise made available, the State may, upon 30 days written notice to Contractor, reduce the level of the Services or the change the production of Deliverables in such manner and for such periods of time as the State may elect. The charges payable under this Contract will be equitably adjusted to reflect any equipment, services or commodities not provided by reason of such reduction.
- (c) In the event the State terminates this Contract, eliminates certain Deliverables, or reduces the level of Services to be provided by Contractor pursuant to this Section, the State will 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. For the avoidance of doubt, this Section will not preclude Contractor from reducing or stopping Services/Deliverables and/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.

2.214 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 incident to the application for, or performance of, a State, public or private Contract or subcontract; convicted of a criminal offense, including any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for State of Michigan employees; convicted under State or federal antitrust statutes; or convicted of any other criminal offense which in the sole discretion of the State reflects upon Contractor's business integrity.

2.215 Approvals Rescinded

The State may terminate this Contract without further liability or penalty in the event any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services pursuant to Constitution 1963, Article 11, § 5, and Civil Service Rule 7-1. 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 such written notice.

2.216 Rights and Obligations Upon Termination

- (a) If this Contract is terminated by the State for any reason, Contractor must (a) stop all work as specified in the notice of termination, (b) take any action that may be necessary, or that the State may direct, for preservation and protection of Deliverables or other property derived or resulting from this Contract that may be in Contractor's possession, (c) return all materials and property provided directly or indirectly to Contractor by any entity, agent or employee of the State, (d) in the event that the Contractor maintains title in Deliverables that is intended to be transferred to the State at the termination of this Contract, Contractor must transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables intended to be transferred to the State at the termination of this Contract and which are resulting from this Contract (which must be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of such items included compensation to Contractor for the provision of warranty services in respect of such materials), and (e) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the extent commercially practical, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract.
- (b) In the event the State terminates this Contract prior to its expiration for its own convenience, the State will pay Contractor for all charges due for Services provided prior to the date of termination and, if applicable, as a separate item of payment pursuant to this Contract, for Work In Process and annual set-up, on a percentage of completion basis at the level of completion determined by the State. All completed or partially completed Deliverables prepared by Contractor pursuant to this Contract must, at the option of the State, become the State's property, and Contractor will be entitled to receive equitable fair compensation for such Deliverables. Regardless of the basis for the termination, the State will not be 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 will have the right to assume, at its option, any and all 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.



2.217 Reservation of Rights

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

2.218 Contractor Transition Responsibilities

In the event this Contract is terminated, for convenience or cause, dissolved, voided, rescinded, nullified, expires or is otherwise rendered unenforceable, the Contractor agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State in exchange for additional compensation. In the event of termination or the expiration of this Contract, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed 180 days. These efforts must include, but are not limited to, the following:

(a) Personnel

The Contractor must work with the State, or a specified third party, to develop a transition plan setting forth the specific tasks and schedule to be accomplished by the parties, and the additional Contractor compensation required 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 negotiate appropriate compensation rates and use the Services of Contractor's Subcontractors or Contractors. Contractor will notify all of Contractor's Subcontractors of procedures to be followed during transition.

(b) Information

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

(c) Software

The Contractor will reasonably assist the State in the acquisition of any Contractor software required to perform the Services/use the Deliverables under this Contract. This will 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 shall, upon expiration of this 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.

(d) Payment

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

2.219 State Transition Responsibilities

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

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

2.220 Termination by Contractor

2.221 Termination by Contractor

If the State materially breaches its obligation to pay Contractor undisputed amounts due and owing under this Contract in accordance with **Section 2.090**, or if the State materially breaches its other obligations under this Contract to perform the Services, and if the State does not cure the breach within the time period specified in a written notice of breach provided to the State by Contractor (such time period not to be less than 30 days), then Contractor may terminate this Contract, in whole or in part based on Statement of Work for cause, as of the date specified in the notice of termination; provided, however, that Contractor must discharge its obligations under **Section 2.250** before any such termination.

2.230 Stop Work**2.231 Stop Work Orders**

The State may, at any time, by written stop work order to Contractor, require that Contractor stop all, or any part, of the work called for by this Contract for a period of up to 90 calendar days after the stop work order is delivered to Contractor, and for any further period to which the parties may agree. The stop work order will be specifically identified as such and will indicate that it is issued under this **Section 2.230**. Upon receipt of the stop work order, Contractor must immediately comply with its terms and take all reasonable steps to minimize the incurrence of 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 will either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order as provided in **Section 2.210**.

2.232 Cancellation or Expiration of Stop Work Order

If a stop work order issued under this **Section 2.230** is canceled or the period of the stop work order or any extension thereof expires, Contractor must resume work. The parties will agree upon an equitable adjustment in the delivery schedule, these Contract price(s), or both, and this Contract will be modified, in writing, accordingly prior to work commencing, if: (a) the stop work order results in an increase in the time required for, or in Contractor's costs properly allocable to, the performance of any part of this Contract; and (b) Contractor asserts its right to an equitable adjustment within 30 calendar days after the end of the period of work stoppage. Any adjustment will conform to the requirements of **Section 2.106**.

The State hereby acknowledges that due to the Contractor's work schedule, a work stoppage ordered by the State may cause a delay in the delivery schedule that is greater than the period of the stop work order.

2.233 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, such termination will be deemed to be a termination for convenience under **Section 2.212**, and the State will allow reasonable costs resulting from the stop work order in arriving at the termination settlement. For the avoidance of doubt, the State will not be liable to Contractor for loss of profits because of a stop work order issued under this **Section 2.230**.

2.240 Deleted N/A2.250 Dispute Resolution**2.251 In General**

Unless otherwise specified in this Contract, any claim, counterclaim, or dispute between the State and Contractor arising out of or relating to this Contract or any Statement of Work will be resolved as follows. For all Contractor claims seeking an increase in the amounts payable to Contractor under this Contract, or the time for Contractor's performance, Contractor will submit a letter executed by Contractor's Contract Administrator or his 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 supporting data provided with such an affidavit are current and complete to Contractor's best knowledge and belief.

2.252 Informal Dispute Resolution

(a) All operational disputes between the parties will be resolved under this Contract Management procedures developed pursuant to **Section 2.100**. If the parties are unable to resolve any disputes after compliance with such processes, the parties will meet with the Chief Procurement Officer, DTMB, or designee, for the purpose of attempting to resolve such dispute without the need for formal legal proceedings, as follows:

- (i) The representatives of Contractor and the State will meet, by phone, e-mail, or in person, as often as the parties reasonably deem necessary in order to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives will discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.
- (ii) During the course of negotiations, all reasonable requests made by one party to another for non-privileged information reasonably related to this Contract will be honored in order that each of the parties may be fully advised of the other's position.



- (iii) The specific format for the discussions will be left to the discretion of the designated State and Contractor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.
- (iv) Following the completion of this process within 60 calendar days, the Chief Procurement Officer, DTMB, or designee, will issue a written opinion regarding the issue(s) in dispute within 30 calendar days. The opinion regarding the dispute will be considered the State's final action and the exhaustion of administrative remedies.
- (b) This **Section 2.250** will 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 pursuant to **Section 2.253**.
- (c) The State will not mediate disputes between the Contractor and any other entity, except state agencies, concerning responsibility for performance of work pursuant to this Contract.

2.253 Injunctive Relief

The only circumstance in which disputes between the State and Contractor will not be subject to the provisions of **Section 2.252** is where a party makes a good faith determination that a breach of the terms of this Contract by the other party is such that the damages to such party resulting from the breach will be so immediate, so large or severe and so incapable of adequate redress after the fact that a temporary restraining order or other immediate injunctive relief is the only adequate remedy.

2.254 Continued Performance

Each party agrees to continue performing its obligations under this Contract while a dispute is being resolved except to the extent the issue in dispute precludes performance (dispute over payment shall not be deemed to preclude performance) and without limiting either party's right to terminate this Contract as provided in **Section 2.210** and **2.220**, as the case may be.

2.260 Federal and State Contract Requirements

2.261 Nondiscrimination

In the performance of this Contract, Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, 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 pursuant to the Elliot Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, and any breach of this provision may be regarded as a material breach of this Contract.

2.262 Unfair Labor Practices

Pursuant to 1980 PA 278, MCL 423.231, *et seq.*, the State will 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 pursuant to 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 this Contract, must not enter into a Contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Pursuant to section 4 of 1980 PA 278, MCL 423.324, the State may void any Contract if, subsequent to award of this Contract, the name of Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of Contractor appears in the register.

2.263 Workplace Safety and Discriminatory Harassment

In performing Services for the State, the Contractor must comply with the Department of Civil Services Rule 2-20 regarding Workplace Safety and Rule 1-8.3 regarding Discriminatory Harassment. In addition, the Contractor must comply with Civil Service regulations and any applicable agency rules provided to the Contractor. For Civil Service Rules, see www.michigan.gov/mdcs.

2.270 Litigation**2.271 Disclosure of Litigation****(a) Disclosure.**

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

(b) Assurances.

In the event that any such Proceeding disclosed to the State pursuant to this Section, or of which the State otherwise becomes aware, during the term of this Contract would cause a reasonable party to be concerned about:

- (i) the ability of Contractor (or a Subcontractor hereunder) to continue to perform this Contract in accordance with its terms and conditions, or
- (ii) whether Contractor (or a Subcontractor hereunder) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in such Proceeding, which conduct would constitute a breach of this Contract or a violation of Michigan law, regulations or public policy, then Contractor will be required to provide the State all reasonable assurances requested by the State to demonstrate that:
 - (A) Contractor and/or its Subcontractors hereunder will be able to continue to perform this Contract and any Statements of Work in accordance with its terms and conditions, and
 - (B) Contractor and/or its Subcontractors hereunder have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in such Proceeding.

(c) Notifications.

Contractor must make the following notifications in writing: Within 30 days of Contractor becoming aware that a change in its ownership has occurred, or is certain to occur, Contractor must notify DTMB-Procurement.

2.272 Governing Law

This Contract will, in all respects, be governed by, and construed in accordance with, 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.

2.273 Compliance with Laws

Contractor must comply with all applicable State, federal, and local laws and ordinances ("Applicable Laws") in providing the Services/Deliverables.

2.274 Jurisdiction

Any dispute arising from this Contract will 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 such jurisdiction on the grounds of lack of personal jurisdiction of such court or the laying of venue of such 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.

2.280 Environmental Provision**2.281 Environmental Provision – Deleted N/A**

2.290 General**2.291 Amendments**

This Contract may not be modified, amended, extended, or augmented, except by a writing executed by the parties.

2.292 Assignment

- (a) Neither party will have the right to assign this Contract, or to assign or delegate any of its duties or obligations under this Contract, to any other party (whether by operation of law or otherwise), without the prior written consent of the other party; provided, however, that the State may assign this Contract to any other State agency, department, division or department without the prior consent of Contractor and Contractor may assign this Contract to an affiliate so long as such affiliate is adequately capitalized and can provide adequate assurances that such affiliate can perform this Contract. Any purported assignment in violation of this Section will be null and void. It is the policy of the State of Michigan to withhold consent from proposed assignments, subcontracts, or novations when such transfer of responsibility would operate to decrease the State's likelihood of receiving performance on this Contract or the State's ability to recover damages.
- (b) Contractor may not, without the prior written approval of the State, assign its right to receive payments due under this Contract. In the event of any such permitted assignment, Contractor will not be relieved of its responsibility to perform any duty imposed upon it herein, and the requirement under this Contract that all payments will be made to one entity will continue.

2.293 Entire Contract; Order of Precedence

- (a) This Contract, including any Statements of Work and Exhibits, to the extent not contrary to this Contract, each of which is incorporated for all purposes, constitutes the entire agreement between the parties with respect to the subject matter and supercedes all prior agreements, whether written or oral, with respect to such subject matter and as additional terms and conditions on the purchase order will apply as limited by **Section 2.061**.
- (b) In the event of any inconsistency between the terms of this Contract and a Statement of Work, the terms of the Statement of Work will take precedence (as to that Statement of Work only); provided, however, that a Statement of Work may not modify or amend the terms of **Sections 2.110 through 2.220** of this Contract, which may be modified or amended only by a formal Contract amendment.

2.294 Headings

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

2.295 Relationship of the Parties (Independent Contractor Relationship)

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

2.296 Notices**(a) Notifications**

Any notice given to a party under this Contract will be deemed effective, if addressed to such 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 (3rd) 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 of Michigan
Services Division - Procurement
Department of Technology, Management and Budget
Phone: 517-241-3768
Fax: 517-335-0046
Email: kingsburyl@michigan.gov



With a copy to:
Douglas Collier
Contract and Finance Manager
Office of Assessment Business Operations
Michigan Department of Education
517-241-4431
collierd1@michigan.gov
www.michigan.gov/BAA

Contractor(s):
ACT, Inc.
Attention: Chief Financial Officer
500 ACT Drive, PO Box 168
Iowa City, Iowa 52243-0168

With a copy to:
ACT, Inc.
Attention: Assistant Vice President, State Programs
500 ACT Drive, PO Box 168
Iowa City, Iowa 52243-0168

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

(b) Binding Commitments – Deleted N/A

2.297 Media Releases and Contract Distribution

(a) Media Releases

Neither Contractor nor the State will make any news releases, public announcements or public disclosures, nor will they have any conversations with representatives of the news media, pertaining to this Contract, the Services or this Contract without the prior written approval of the other party, and then only according to explicit written instructions provided by that party. In addition, neither Contractor nor the State will use the trademarks or other proprietary identifying symbol of the other party or its affiliates without the party's prior written consent. Prior written consent of the Contractor must be obtained from authorized representatives. Notwithstanding the foregoing, the parties agree that use of the party names for business references is acceptable without prior written consent.

(b) Contract Distribution

DTMB-Procurement will retain the sole right of this Contract distribution to all State agencies and local units of government unless other arrangements are authorized by DTMB-Procurement.

2.298 Reformation and Severability

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

2.299 Consents and Approvals

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

2.300 No Waiver of Default

The failure of a party to insist upon strict adherence to any term of this Contract will not be considered a waiver or deprive the party of the right thereafter to insist upon strict adherence to that term, or any other term, of this Contract.

2.301 Survival

Any provisions of this Contract that impose continuing obligations on the parties including the parties' respective warranty, indemnity and confidentiality obligations, will survive the expiration or termination of this Contract for any reason. Specific references to survival in this Contract are solely for identification purposes and not meant to limit or prevent the survival of any other section.

2.302 Covenant of Good Faith

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

**2.303 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 will pay for all costs and expenses incurred in obtaining and maintaining any necessary easements or right of way.

2.304 Website Incorporation

Unless otherwise specified in this Contract, the parties expressly state that they will not be bound by any content on the other party's website, even if the other party's documentation specifically referenced that content and attempts to incorporate it into any other communication, unless the party has actual knowledge of such content and has expressly agreed to be bound by it in a writing that has been manually signed by authorized representatives of both parties.

2.305 Taxes

Contractor must collect and pay all applicable federal, State, and local employment taxes.

2.306 Prevailing Wages – Deleted N/A**2.307 Call Center Disclosure**

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

2.308 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 leading edge on the competitive RFP.

2.310 Deleted N/A

2.320 Extended Purchasing

2.321 MiDEAL - Deleted N/A**2.322 State Employee Purchases – Deleted N/A**



Attachment A, Pricing

Michigan Department of Education

Task	Grade 8 assessment	Grade 10 assessment	Program Management	Total Cost
Standard Materials, training, Delivery, and Collection	Included In Total Cost	Included In Total Cost	NA	Included In Total Cost
Standard Scoring and Analysis	Included In Total Cost	Included In Total Cost	NA	Included In Total Cost
Standard Reporting and data file (including UIC, barcode number) and all data in standard reports	Included In Total Cost	Included In Total Cost	NA	Included In Total Cost
Unit Price - Based on Answer Documents Scored			\$0.00	
Projected Volume of students	120,000	130,000	-	-
Total unit cost for year One and Two	\$7.25	\$8.75	To be included in total cost	\$3,400,000.

Total Contract cost is based on estimated projected volumes of students participation, actual counts/volumes will vary.

NOTE:

Districts and schools who fail to submit materials orders during the materials order window and require Late/supplemental shipments will be responsible for expedited shipping charges of a \$30.00 set-up fee plus the Appropriate per item fee:

- Overnight Expedited Shipping: \$1.25/package item
- Second-Day Expedited Shipping: \$0.50/package item

These charges will be billed to the ordering entity (district or school), not BAA. Unit cost will remain constant for the two year term