

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

July 22, 2009

**CHANGE NOTICE NO. 2**  
**TO**  
**CONTRACT NO. 071B620028**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF VENDOR		TELEPHONE (517) 381-7964
<b>The ASU Group</b> <b>P.O. Box 77</b> <b>Okemos, MI 48805-0077</b>  BRA1480@ausgroup.com		<b>Brad Rutgers</b>
		BUYER/CA (517) 241-3768 <b>Lance Kingsbury</b>
Contract Compliance Inspector: Steve Davis (517) 373-3808 <a href="mailto:Daviss1@michigan.gov">Daviss1@michigan.gov</a> <b>Motor Vehicle Self Insurance Program - DMB – State Building Authority</b>		
CONTRACT PERIOD: From: <b>November 1, 2005</b> To: <b>October 31, 2010</b>		
TERMS	N/A	SHIPMENT
		N/A
F.O.B.	N/A	SHIPPED FROM
		N/A
MINIMUM DELIVERY REQUIREMENTS		
N/A		

**NATURE OF CHANGE(S):**

Effective immediately, this Contract is hereby **EXTENDED** through October 31, 2010, and **INCREASED** by \$45,000.00. All other terms, conditions, specifications, and pricing remain unchanged.

**AUTHORITY/REASON:**

Per agency request (PRF dated 5/7/09), Ad Board approval on 7/21/09, and DMB/Purchasing Operations' approval.

**REVISED CURRENT AUTHORIZED SPEND LIMIT: \$228,000.00**

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

September 19, 2008

CHANGE NOTICE NO. 1  
 TO  
 CONTRACT NO. 071B6200028  
 between  
 THE STATE OF MICHIGAN  
 and

NAME & ADDRESS OF VENDOR		TELEPHONE (517) 381-7964
<b>The ASU Group</b> <b>P.O. Box 77</b> <b>Okemos, MI 48805-0077</b>  BRA1480@ausgroup.com		<b>Brad Rutgers</b>
		BUYER/CA (517) 241-3768 <b>Lance Kingsbury</b>
Contract Compliance Inspector: Steve Davis (517) 373-3808 <a href="mailto:Daviss1@michigan.gov">Daviss1@michigan.gov</a> <b>Motor Vehicle Self Insurance Program - DMB – State Building Authority</b>		
CONTRACT PERIOD:		From: <b>November 1, 2005</b> To: <b>October 31, 2009</b>
TERMS	N/A	SHIPMENT N/A
F.O.B.	N/A	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A		

**NATURE OF CHANGE(S):**

Effective October 31, 2008, this Contract is hereby EXTENDED through October 31, 2009, per Section 2.004 of this Contract. NOTE: The DMB/Buyer for this Contract is changed to Lance Kingsbury (517) 241-3768. All other terms, conditions, specifications, and pricing remain unchanged.

**AUTHORITY/REASON:**

Per agency request (PRF dated 8/11/08), and DMB/Purchasing Operations' approval.

**CURRENT AUTHORIZED SPEND LIMIT REMAINS: \$183,000.00**

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

November 14, 2005

**NOTICE  
 TO  
 CONTRACT NO. 071B620028  
 between  
 THE STATE OF MICHIGAN  
 and**

NAME & ADDRESS OF VENDOR  <b>The ASU Group          P.O. Box 77          Okemos, MI 48805-0077</b>  Mik0169@ausgroup.com		TELEPHONE (517) 349-2212 x7949 <b>Michael A. Wood</b>
		BUYER/CA (517) 335-4804 <b>Douglas Collier</b>
Contract Compliance Inspector: Steve Davis (517) 373-3808 <a href="mailto:Daviss1@michigan.gov">Daviss1@michigan.gov</a> <b>Motor Vehicle Self Insurance Program - DMB – State Building Authority</b>		
CONTRACT PERIOD: From: <b>November 1, 2005</b> To: <b>October 31, 2008</b>		
TERMS	N/A	SHIPMENT
F.O.B.	N/A	SHIPPED FROM
MINIMUM DELIVERY REQUIREMENTS		N/A

The terms and conditions of this Contract are those of ITB #071I5200312, this Contract Agreement and the vendor's quote dated 7/29/2005. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.

Estimated Contract Value: **\$183,000.00**

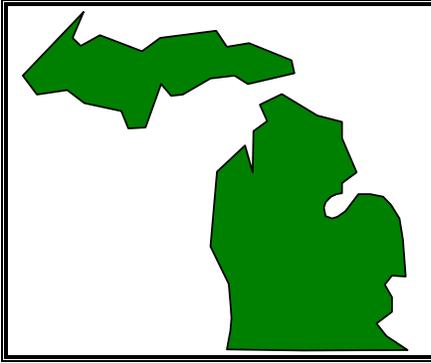
**STATE OF MICHIGAN  
 DEPARTMENT OF MANAGEMENT AND BUDGET  
 ACQUISITION SERVICES  
 P.O. BOX 30026, LANSING, MI 48909  
 OR  
 530 W. ALLEGAN, LANSING, MI 48933**

**CONTRACT NO. 071B6200028  
 between  
 THE STATE OF MICHIGAN  
 and**

NAME & ADDRESS OF VENDOR  <p style="text-align: center;"><b>The ASU Group          P.O. Box 77          Okemos, MI 48805-0077</b></p> <p style="text-align: right; font-size: small;">Mik0169@ausgroup.com</p>	TELEPHONE (517) 349-2212 x7949 <p style="text-align: center;"><b>Michael A. Wood</b></p> <hr/> BUYER/CA (517) 335-4804 <p style="text-align: center;"><b>Douglas Collier</b></p>
Contract Compliance Inspector: Steve Davis (517) 373-3808 Daviss1@michigan.gov <p style="text-align: center;"><b>Motor Vehicle Self Insurance Program - DMB – State Building Authority</b></p>	
CONTRACT PERIOD: From: <b>November 1, 2005</b> To: <b>October 31, 2008</b>	
TERMS <p style="text-align: center;"><b>N/A</b></p>	SHIPMENT <p style="text-align: center;"><b>N/A</b></p>
F.O.B. <p style="text-align: center;"><b>N/A</b></p>	SHIPPED FROM <p style="text-align: center;"><b>N/A</b></p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;"><b>N/A</b></p>	
MISCELLANEOUS INFORMATION:  <p><b>The terms and conditions of this Contract are those of ITB #071I5200312, this Contract Agreement and the vendor's quote dated 7/29/2005. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.</b></p> <p><b>Estimated Contract Value:                    \$183,000.00</b></p>	

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

<b>FOR THE VENDOR:</b>  <p style="text-align: center;"><b>The ASU Group</b>          _____          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>	<b>FOR THE STATE:</b>  <p style="text-align: center;">_____          Signature  <b>Douglas Collier, CPPB, Buyer Specialist</b>          _____          Name  <b>Services Division, Acquisition Services</b>          _____          Title</p> <p style="text-align: center;">_____          Date</p>
--	--



**STATE OF MICHIGAN  
Department of Management and Budget  
Acquisition Services**

Contract No. 071B6200028  
STATE OF MICHIGAN MOTOR VEHICLE SELF-INSURANCE PROGRAM

Buyer Name: Douglas Collier  
Telephone Number: 517 / 335 - 4804  
E-Mail Address: [collierd1@michigan.gov](mailto:collierd1@michigan.gov)



**STATE OF MICHIGAN MOTOR VEHICLE SELF-INSURANCE PROGRAM**

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## Article 1 – Statement of Work (SOW)

### 1.0 Project Identification

#### 1.001 PROJECT REQUEST

The State of Michigan, Department of Management and Budget, State Building Authority (SBA) works with a third-party administrator (TPA) in order to provide for the processing of claims related to the State of Michigan's motor vehicle self-insurance program. The state's TPA is critical in allowing the state to maintain its motor vehicle self-insurance program; as a TPA is needed because statute requires those seeking to use the motor vehicle self-insurance option to have a certified claims adjuster specified to handle all claims.

#### 1.002 BACKGROUND

The State of Michigan maintains a self-insurance fund (the Fund) in order to pay all first party, and up to \$1,000,000 per accident in third party benefits, as well as the defense costs associated with its 11,000 vehicle fleet. SBA administers the Fund, and oversees the TPA by reviewing claim files activities, approving all reserves, and approving any pre-suit settlements. Once a suit is filled, SBA handles defense coordination and settlement negotiations. Currently, the Fund has reserves of over \$7 million dollars.

Fiscal Year (10/1-9/30)	Number of Claims	Amount Paid
2001	211	\$ 2,590,458.06
2002	170	\$ 1,780,047.62
2003	169	\$ 2,487,728.65
2004	170	\$ 2,718,181.64
2005*	NA	\$ 735,549.74
*As of 1/12/05		

### 1.1 Scope of Work and Deliverables

#### 1.101 IN SCOPE

- The Contractor will be required to provide monthly loss reports to the Contract Administrator.
- The Contractor will be responsible for recommending and establishing the initial claim reserve when a claim file is established and evaluating the reserve as long as the claim remains open. Whenever the Contractor recommends a reserve or change to a reserve greater than \$5,000 the Contractor will be required to notify the Contract Administrator and seek approval.
- The Contractor will be responsible for Claims evaluation and obtaining independent medical examination (IME) when deemed appropriate (IME's will be paid for by the State). The use of outside claims investigators may be authorized, on a case-by-case basis. When cost will be greater that \$5,000 the Contractor will be required to notify the Contract Administrator and seek approval.
- The contractor will make recommendations to settle or discontinue payment of a claim. The Contractor will be required to notify the Contract Administrator and seek approval for settlements greater that \$5,000. The contractor will also be required to notify the Contract Administrator and seek approval before discontinuing payment of any claim.

#### 1.102 OUT OF SCOPE

- Any payment, settlement, or other cost exceeding \$5,000 with out prior authorization.



### 1.103 TECHNICAL ENVIRONMENT

The State Building Authority, Risk Management Section currently uses Windows 2000 Professional, as well as Microsoft Office 2000. Any electronic documents should be compatible with these software programs.

### 1.104 WORK AND DELIVERABLE

The following is a preliminary analysis of the major tasks involved for developing the end product of this Contract. The Contractor is not, however, constrained from supplementing this listing with additional steps, sub tasks or elements deemed necessary to permit the development of alternative approaches or the application of proprietary analytical techniques.

**Overall Plan:** An overall plan must be developed as a basis for executing subsequent steps as the Contract progresses. Essential to the process of this task is the preparation of a sound approach to attaining the objectives of the Contract. This plan will describe the bidder's practices and procedures including timeframes for all aspects of claims handling. Included should be the bidder's process for handling claims, including file initiation, investigation, and the bidder's philosophy regarding claims resolution.

**Record Keeping:** The Contractor will maintain all claim activity. This claim information shall be maintained in a complete manner assuring that any questions regarding the claim can be properly documented by a review of the claim file. All information shall be placed in individual claim files with a specific claim file number and alphabetically cross-referenced. Files should be maintained at the location of the Contractor and available for audit purposes. All documentation to assure the ability of the Contract Administrator or designee to audit the files shall be maintained. The file shall include any documentation that may subsequently be necessary for litigation support. Records shall include, at a minimum:

1. Adjuster's notes
2. Claimant name
3. Claimant address
4. Date of loss
5. Date claim reported
6. Estimated cost of loss
7. Amounts paid
8. Dates of payment
9. Type of payment/purpose
10. State driver name
11. State driver information
12. Type of accident
13. State driver's agency
14. Medical documentation
15. Witness information
16. Settlement information
17. Vehicle description
18. License number
19. Police jurisdiction
20. Rehabilitation info
21. Date claim closed



**Claims Evaluation/Investigation:** Claims evaluation should include, at a minimum, the following types of activities at no additional charge: recorded or signed statements from the state driver, claimant and/or witnesses; contact and negotiations with the claimant and/or their attorney; obtaining necessary records (police reports, medical information, vehicle registration information) and claimant activity checks; and obtaining independent medical examination (IME) when deemed appropriate (IME's will be paid for by the State). On-site inspections are not necessary. The use of outside claims investigators may be authorized, on a case-by-case basis. Investigative reports must be made part of the claim file and be made available to the Contract Administrator upon request.

In the event that the Contractor determines that a payment or settlement request shall be denied, a complete description of the claim and the circumstances that support the denial will be provided to the Contract Administrator for approval. Such notification will be made electronically to the Contract Administrator within 3 days.

**Claims Adjusting:** Claims must be adjusted in a prompt and cost-effective manner, using industry standards and keeping the best interest of the State in mind. Any medical or other related expenses should be provided in as timely a manner as possible to mitigate the loss potential of any claim.

Where a negotiated settlement of a claim is deemed appropriate, a complete description of the claim and the circumstances, which support the settlement, will be provided to the Contract Administrator. In situations where a claim settlement cannot be recommended, the Contractor shall promptly advise the claimant that no settlement will be offered. If litigation should result, all litigation will be handled by the Michigan Attorney General. The Contractor will immediately notify the Contract Administrator of any notice of intent to file or notice of lawsuit.

The Contractor will assure that all payments to claimants or their representatives are the minimum possible keeping in mind the best interest of the State of Michigan. Payments of an unusual nature shall be discussed with the Contract Administrator. For settlements or payments in excess of \$5,000 contractor shall obtain authorization from the Contract Administrator

The State will deposit funds of \$50,000 into an account established by the Contractor and claim payments will be made from that account. This account must be available at all times for audit by the Contract Administrator or designee. Replenishment of the account will be on monthly basis. Replenishment of the account occurs the month following a claim payment. The State will make payment on larger dollar claims, over \$50,000, on a more frequent basis. The Contractor will be required to submit an invoice allowing whenever it requests prepayment of a large dollar claim.

**Claims Reserving:** Claim reserves must be established in an appropriate amount at all times. The Contractor will be responsible for recommending and establishing the initial claim reserve when a claim file is established and evaluating the reserve as long as the claim remains open. Whenever the Contractor recommends a reserve or change to a reserve greater than \$5,000 the Contractor will be required to notify the Contract Administrator and seek approval. The preferred method of notification is electronic. The Contractor must provide justification for the reserve amount recommended.

**Accident Reporting:** The majority of current reporting occurs through Wheels, Inc. (Wheels). A wheel provides vehicle lease services to the State. Contractor will be required to work with Wheels, or any subsequent party handling accident reports in order to obtain the reports so that Contractor can proactively contact claimant when appropriate.

Contract will also provide a toll free number for claims to be filed for accidents that have gone unreported to Wheels.

**Loss Reporting:** The Contractor will be required to provide monthly loss reports to the Contract Administrator. These reports shall include at a minimum, reports clearly identifying new claims reported, claims remaining open, and claims with reserve changes. All reports will be sub-divided by state department and will include a fleet total by vehicle type.

These reports shall be in electronic form. The information on these loss reports shall include the following claims information:



1. Date of Loss
2. Claimant Name
3. Driver name
4. Type of Loss
5. Amount & Date Paid
6. State Agency
7. Amount Reserved
8. Change(s) in Reserve
9. Vehicle Type
10. Total Paid by Claim
11. Claim status
12. Date claim reported
13. Date claim closed

Also the report should contain the following data by fiscal year:

1. Total Number of Incidents Reported by Agency
2. Total Number of Claims Reported by Agency
3. Total Number of Incidents Reported by quarter
4. Total Number of Claims Reported by quarter
5. Grand Total Number of Incidents Reported for Fleet
6. Grand Total Number of Claims for Fleet

The Loss Report will be provided to the Contract Administrator by the 15<sup>th</sup> of the month following the monthly reporting period indicated. The specific format of the report will be agreed to between the Contractor and the Contract Administrator.

This reporting will also include providing the necessary information for the performance of an actuarial study of the State's losses on a yearly basis. The format of this report will be created by the contractor and approved by the Contract Administrator. The Contractor must be able to generate detailed loss runs in an electronic format, provide data as of any requested point in time, and split losses into bodily injury, physical damage and expense amounts. Loss runs will be provided, free of charge, upon request.

**Accurate Billing:** The Contractor will assure that all billings for services and provisions of such services are accurate. The amount billed shall reflect the specific claims and other services being billed for, the time period the billing covers, and other pertinent information to assist the Contract Administrator and the state auditor to assure that billings are accurate. Billings should be submitted within 15 days following the end of the month and allow at least thirty (30) days for payment.

## 1.2 Roles and Responsibilities

### 1.201 CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES

The Contractor must identify proposed staff who will be involved in the performance of this contract, identify by name individuals that are to be designated as Key Personnel, and describe in detail their roles and responsibilities. Contractor must identify where staff will be physically located during Contract performance. The State reserves the right to approve the Contractor's assignment of Key Personnel to this project and to recommend reassignment of personnel deemed unsatisfactory by the State. Any person working on this contract must have proper certification/license necessary to carry out contract, such as claims adjustors, accountants, etc. The Contractor shall not remove or reassign, without the State's prior written approval any of the Key Personnel until such time as the Key Personnel have completed all of their planned and assigned responsibilities in connection with performance of the Contractor's obligations under this Contract. The Contractor agrees that the continuity of Key Personnel is critical and agrees to the continuity of Key Personnel. Removal of Key Personnel without the written consent of the State may be considered by the State to be a material breach of this Contract. The prohibition against removal or reassignment shall not apply where Key Personnel must be replaced for reasons beyond the reasonable control of the Contractor including but not limited to illness, disability, resignation or termination of the Key Personnel's employment.

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

The State's Risk Manager, currently Deborah Roberts, has authority to approve insurance policy acquisitions, changes and cancellations. This authority may be delegate to the Risk Management Assistant and the Risk Manager sees fit. The manager provides over site to the program, but will not be the primary point of contact for routine operations.

The Risk Management Assistant, currently Steve Davis, will act as the primary liaison with the contractor. He will be responsible for obtaining information needed to obtain and manages the State's insurance policies. Additionally, he will provide authority to the contractor as determined by the Risk Manager and make any and all payments with the approval of the manager.

**1.203 RESERVED****1.3 RESERVED****1.4 RESERVED****1.5 Acceptance****1.501 CRITERIA**

The following criteria will be used by the State to determine Acceptance of the Services and/or Deliverables provided under this SOW.

- Timeliness of claims managements.
- Diligent management of claim costs.
- Complete claim files.
- Courteous service to both state staff and attorneys, and claimants.

**1.502 RESERVED****1.6 Compensation and Payment See APPENDIX A**

State shall pay Contractor an amount not to exceed [\_\_\_\_\_] dollars (\$\_\_\_\_) [specify maximum dollar amount] for the performance of all activities necessary for or incidental to the performance of work as set forth in this SOW. Authorized Services and Price List as follows:

Contractor shall propose payment methods for claims management, either by per claim charges or by set service fee. Fee structure should be simple.

**1.7 RESERVED**



## **Article 2 – General Terms and Conditions**

### **2.0 Introduction**

#### **2.001 GENERAL PURPOSE**

The Contract is for public entity insurance broker services for the State of Michigan. Orders will be issued directly to the Contractor by various State Agencies on the Purchase Order Contract Release Form. Bids are due and will be publicly identified at the time noted on the Invitation To Bid (ITB) Form.

#### **2.002 ISSUING OFFICE AND CONTRACT ADMINISTRATOR**

The Contract is issued by Acquisition Services, State of Michigan, Department of Management and Budget, hereinafter known as Acquisition Services, for the Department of Management and Budget, State Building Authority hereinafter known as SBA. Where actions are a combination of those of Acquisition Services and the State agencies, the authority will be known as the State.

Acquisition Services is the sole point of contact in the State with regard to all procurement and contractual matters relating to the commodities and/or services described herein. Acquisition Services is the only office authorized to negotiate, change, modify, amend, alter, clarify, etc., the specifications, terms, and conditions of the Contract. Acquisition Services will remain the SOLE POINT OF CONTACT throughout the procurement process.

**Contractor proceeds at its own risk if it takes negotiation, changes, modification, alterations, amendments, clarification, etc., of the specifications, terms, or conditions of the contract from any individual or office other than Acquisition Services and the listed contract administrator**

All communications covering this procurement must be addressed to contract administrator indicated below:

Department of Management and Budget  
Acquisition Services  
Attn: Douglas Collier  
2nd Floor, Mason Building  
P.O. Box 30026  
Lansing, Michigan 48909  
(517) 335 - 4804  
collierd1@michigan.gov

#### **2.003 NOTICE**

Any notice given to a party under this Contract must be written and shall 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.

#### **2.004 CONTRACT TERM**

The term of this Contract will be for three (3) years and will commence with the issuance of a Contract. This will be approximately November 1, 2005 through October 31, 2008.

**Option.** The State reserves the right to exercise 2 one-year options, at the sole option of the State. Contractor performance, quality of products, price, cost savings, and the contractor's ability to deliver on time are some of the criteria that will be used as a basis for any decision by Acquisition Services to exercise an option year.



**Extension.** At the sole option of the State, the contract may also be extended. Contractor performance, quality of products, price, cost savings, and the contractor's ability to deliver on time are some of the criteria that will be used as a basis for any decision by Acquisition Services to exercise an option year.

Written notice will be provided to the Contractor within 30 provided that the State gives the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the Government to an extension. If the Government exercises this option, the extended contract shall be considered to include this option clause.

## 2.005 GOVERNING LAW

The Contract shall in all respects be governed by, and construed in accordance with, the laws of the State of Michigan. By signing this agreement, vendor consents to personal jurisdiction in the state of Michigan. Any dispute arising herein shall be resolved in the State of Michigan.

## 2.006 APPLICABLE STATUTES

The following statutes, rules, and laws are applicable to the performance of this contract; some statutes are reflected in the clauses of this contract. This list is NOT exhaustive.

MI Uniform Commercial Code (MIUCC) MCL 440. (All sections unless otherwise altered by agreement)

MI OSHA MCL §§ 408.1001 – 408.1094

Freedom of Information Act (FIOA) MCL §§ 15.231, et seq.

Natural Resources and Environmental Protection Act MCL §§ 324.101, et seq.

MI Consumer Protection Act MCL §§ 445.901 – 445.922

Laws relating to wages, payments of wages, and fringe benefits on state projects MCL §§ 408.551 – 408.558, 408.471 – 408.490, 1965 PA 390.

Department of Civil Service Rules and regulations

Elliot Larsen Civil Rights Act MCL §§ 37.2201, et seq.

Persons with disabilities Civil Rights Act MCL §§ 37.1101, et seq.

MCL §§ 423.321, et seq.

MCL § 18.1264 (law regarding debarment)

Davis-Bacon Act (DBA) 40 USCU §§ 276(a), et seq.

Contract Work Hours and Safety Standards Act (CWHSSA) 40 USCS § 327, et seq.

Business Opportunity Act for Persons with Disabilities MCL §§ 450.791 – 450.795

Rules and regulations of the Environmental Protection Agency

Internal Revenue Code

Rules and regulations of the Equal Employment Opportunity Commission (EEOC)

The Civil Rights Act of 1964, USCS Chapter 42

Title VII, 42 USCS §§ 2000e et seq.

The Americans with Disabilities Act (ADA), 42 USCS §§ 12101 et seq.

The Age Discrimination in Employment Act of 1967 (ADEA), 29 USCS §§ 621, 623 et seq.

The Old Workers Benefit and Protection Act of 1990 (OWBPA), 29 USCS §§ 626, et seq.

The Family Medical Leave Act of 1993 (FMLA), 29 USC §§ 651 et seq.

The Fair Labor Standards Act (FLSA), 29 USC §§ 201 et seq.

Pollution Prevention Act of 1990 (PPA) 42 U.S.C. §13106

Sherman Act, 15 U.S.C.S. § 1 et seq.

Robinson-Patman Act, 15 U.S.C.S. § 13 et. seq.

Clayton Act, 15 U.S.C.S. § 14 et seq.

## 2.007 RELATIONSHIP OF THE PARTIES

The relationship between the State and the Contractor is that of client and independent Contractor. No agent, employee, or servant of the Contractor or any of its subcontractors shall be or shall be deemed to be an employee, agent, or servant of the State for any reason. The 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.

**2.008 HEADINGS**

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

**2.009 MERGER**

This document constitutes the complete, final, and exclusive agreement between the parties. All other prior writings and negotiations are ineffective.

**2.010 SEVERABILITY**

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

**2.011 SURVIVORSHIP**

Any provisions of the Contract that impose continuing obligations on the parties including, but not limited to the Contractor's indemnity and other obligations shall survive the expiration or cancellation of the Contract for any reason.

**2.012 NO WAIVER OF DEFAULT**

The failure of a party to insist upon strict adherence to any term of the Contract shall 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 the Contract.

**2.013 PURCHASE ORDERS**

Orders for delivery of commodities and/or services may be issued directly by the State Departments through the issuance of a Purchase Order Form referencing this Contract (Blanket Purchase Order) agreement and the terms and conditions contained herein. Contractor is asked to reference the Purchase Order Number on all invoices for payment.

**2.1 Vendor/Contractor Obligations****2.101 ACCOUNTING RECORDS**

The Contractor and all subcontractors shall maintain all pertinent financial and accounting records and evidence pertaining to the Contract in accordance with generally accepted principles of accounting and other procedures specified by the State of Michigan. Financial and accounting records shall be made available, upon request, to the State of Michigan, its designees, or the Michigan Auditor General at any time during the Contract period and any extension thereof, and for three years from expiration date and final payment on the Contract or extension thereof.

**2.102 NOTIFICATION OF OWNERSHIP**

The Contractor shall make the following notifications in writing:

1. When the Contractor becomes aware that a change in its ownership or officers has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify Acquisition Services within 30 days.
2. The Contractor shall also notify the Acquisition Services within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.



The Contractor shall:

1. Maintain current, accurate, and complete inventory records of assets and their costs;
2. Provide Acquisition Services or designated representative ready access to the records upon request;
3. Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership or officer changes; and
4. Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership or officer change.

**2.103 RESERVED**

**2.104 RESERVED**

**2.105 RESERVED**

**2.106 PREVAILING WAGE RESERVED**

**2.107 PAYROLL AND BASIC RECORDS**

Payrolls and basic records relating to the performance of this contract shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

The Contractor shall submit a copy of all payrolls to the Contract Administrator upon request. The payrolls submitted shall set out accurately and completely all of the information required to be maintained as indicated above.

The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors upon request from the Contract Administrator

The Contractor or subcontractor shall permit the Contract Administrator or representatives of the Contract Administrator or the State of Michigan to interview employees during working hours on the job.

If the Contractor or subcontractor fails to submit required records or to make them available, the Contract Administrator may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment.

**2.108 COMPETITION IN SUB-CONTRACTING**

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

**2.109 RESERVED**



## 2.2 Contract Performance

### 2.201 TIME IS OF THE ESSENCE

Contractor/Vendor is on notice that time is of the essence in the performance of this contract. Late performance will be considered a material breach of this contract, giving the State a right to invoke all remedies available to it under this contract.

### 2.202 CONTRACT PAYMENT SCHEDULE

All invoices should reflect actual work done. Specific details of invoices and payments will be agreed upon between the Contract Administrator and the Contractor after the proposed Contract Agreement has been signed and accepted by both the Contractor and the Director of Acquisition Services, Department of Management & Budget. This activity will occur only upon the specific written direction from Acquisition Services.

### 2.203 POSSIBLE PROGRESS PAYMENTS

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

### 2.204 RESERVED

### 2.205 ELECTRONIC PAYMENT AVAILABILITY

Electronic transfer of funds is available to State contractors. Vendor is required register with the State of Michigan Office of Financial Management so the State can make payments related to this Contract electronically at [www.cpexpress.state.mi.us](http://www.cpexpress.state.mi.us).

### 2.206 RESERVED

## 2.3 Contract Rights and Obligations

### 2.301 INCURRING COSTS

The State of Michigan is not liable for any cost incurred by the Contractor prior to signing of the Contract. The State fiscal year is October 1st through September 30th. The Contractor(s) should realize that payments in any given fiscal year are contingent upon enactment of legislative appropriations. Total liability of the State is limited to terms and conditions of the Contract.

### 2.302 CONTRACTOR RESPONSIBILITIES

The Contractor will be required to assume responsibility for all contractual activities, whether or not that Contractor performs them. Further, the State will consider the Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the anticipated Contract. If any part of the work is to be subcontracted, the Contract must include a list of subcontractors, including firm name and address, contact person and a complete description of work to be subcontracted. The State reserves the right to approve subcontractors and to require the Contractor to replace subcontractors found to be unacceptable. The Contractor is totally responsible for adherence by the subcontractor to all provisions of the Contract. Any change in subcontractors must be approved by the State, in writing, prior to such change.

### 2.303 ASSIGNMENT AND DELEGATION

The Contractor shall not have the right to assign this Contract, to assign its rights under this contract, or delegate any of its duties or obligations under the Contract to any other party (whether by operation of law or otherwise), without the prior written consent of the State.



Any purported assignment in violation of this Section shall be null and void. Further, the Contractor may not assign the right to receive money due under the Contract without the prior written consent of the Director of Acquisition Services.

The Contractor shall not delegate any duties or obligations under the Contract to a subcontractor other than a subcontractor named and approved in the bid unless the Director of Acquisition Services has given written consent to the delegation.

**Bidder must obtain the approval of the Director of Acquisition Services before using a place of performance that is different from the address that bidder provided in the bid.**

#### 2.304 TAXES

Sales Tax: For purchases made directly by the State of Michigan, the State is exempt from State and Local Sales Tax. Prices shall not include such taxes. Exemption Certificates for State Sales Tax will be furnished upon request.

Federal Excise Tax: The State of Michigan may be exempt for Federal Excise Tax, or such taxes may be reimbursable, if articles purchased under this Contract are used for the State's exclusive use. Certificates exclusive use for the purposes of substantiating a tax-free, or tax-reimbursable sale will be sent to the Contractor upon request. If a sale is tax exempt or tax reimbursable under the Internal Revenue Code, prices shall not include the Federal Excise Tax.

The State's Tax Exempt Certification is available for vendor viewing upon request to the Contract Administrator.

#### 2.305 INDEMNIFICATION

##### General Indemnification

To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State, its departments, divisions, agencies, sections, commissions, officers, employees and agents, from and against all losses, liabilities, penalties, fines, damages and claims (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties), arising from or in connection with any of the following:

1. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from (1) the product provided or (2) performance of the work, duties, responsibilities, actions or omissions of the Contractor or any of its subcontractors under this Contract.
2. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from a breach by the Contractor of any representation or warranty made by the Contractor in the Contract;
3. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or related to occurrences that the Contractor is required to insure against as provided for in this Contract;
4. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from the death or bodily injury of any person, or the damage, loss or destruction of any real or tangible personal property, in connection with the performance of services by the Contractor, by any of its subcontractors, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable; provided, however, that this indemnification obligation shall not apply to the extent, if any, that such death, bodily injury or property damage is caused solely by the negligence or reckless or intentional wrongful conduct of the State;



5. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents which results from an act or omission of the Contractor or any of its subcontractors in its or their capacity as an employer of a person.

#### Patent/Copyright Infringement Indemnification

To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State, its employees and agents from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements 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 or foreign patent, copyright, trade secret or other proprietary right of any person or entity, which right is enforceable under the laws of the United States. In addition, should the equipment, software, commodity, or service, or the operation thereof, become or in the 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 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.

#### Code Indemnification

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

#### Indemnification Obligation Not Limited

In any and all claims against the State of Michigan, or any of its agents or employees, by any employee of the Contractor or any of its subcontractors, the indemnification obligation under the Contract shall 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 benefits acts, or other employee benefits acts. This indemnification clause is intended to be comprehensive. Any overlap in sub clauses, 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 sub clause.

#### Continuation of Indemnification Obligation

The duty to indemnify will continue in full force and affect notwithstanding the expiration or early termination of the Contract with respect to any claims based on facts or conditions, which occurred prior to termination.

#### Indemnification Procedures

The procedures set forth below shall 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 shall 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 so notify Contractor shall relieve Contractor of its indemnification obligations except to the extent that Contractor can demonstrate damages attributable to such failure.



Within ten (10) days following receipt of written notice from the State relating to any claim, Contractor shall 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 shall 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 shall, 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 shall periodically advise the State about the status and progress of the defense and shall 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 shall 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 ten (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 shall 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 shall promptly reimburse the State for all such reasonable costs and expenses.

### **2.306 LIMITATION OF LIABILITY**

The Contractor's liability for damages to the State shall be limited to two times the value of the Contract or \$5,000,000 which ever is higher. The foregoing limitation of liability shall not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; to Contractor's indemnification obligations (2.305); or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

The State's liability for damages to the Contractor shall be limited to the value of the Contract.

### **2.307 CONTRACT DISTRIBUTION**

Acquisition Services shall retain the sole right of Contract distribution to all State agencies and local units of government unless other arrangements are authorized by Acquisition Services.

### **2.308 RESERVED**



### 2.309 ASSIGNMENT OF ANTITRUST CAUSE OF ACTION

For and in consideration of the opportunity to submit a quotation and other good and valuable consideration, the bidder hereby assigns, sells and transfers to the State of Michigan all rights, title and interest in and to all causes of action it may have under the antitrust laws of the United States or this State for price fixing, which causes of action have accrued prior to the date of payment and which relate solely to the particular goods, commodities, or services purchased or procured by this State pursuant to this transaction.

### 2.310 RESERVED

### 2.311 TRANSITION ASSISTANCE

If this Contract is not renewed at the end of this term, or is canceled prior to its expiration, for any reason, the Contractor must provide for up to 90 days after the expiration or cancellation of this Contract, all reasonable transition assistance requested by the State, to allow for the expired or canceled portion of the Services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this Contract, (notwithstanding this expiration or cancellation) except for those Contract terms or conditions that do not reasonably apply to such transition assistance. The State shall pay the Contractor for any resources utilized in performing such transition assistance at the most current rates provided by the Contract for Contract performance.

### 2.312 RESERVED

### 2.313 RESERVED

### 2.314 WEBSITE INCORPORATION

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

## 2.4 Contract Review and Evaluation

### 2.401 CONTRACT COMPLIANCE INSPECTOR

Upon receipt at Acquisition Services of the properly executed Contract Agreement(s), the person named below will be allowed to oversee the Contract performance on a day-to-day basis during the term of the Contract. However, overseeing the Contract implies **no authority to negotiate, change, modify, clarify, amend, or otherwise alter the terms, conditions, and specifications of such Contract(s). That authority is retained by Acquisition Services.** The Contract Compliance Inspector for this project is:

Steve Davis  
Department of Management and Budget  
State Building Authority  
320 South Walnut Street  
Lansing, MI 48933  
*Daviss1@Michigan.gov*  
(517) 373-3808

### 2.402 PERFORMANCE REVIEWS

Acquisition Services in conjunction with the State Building Authority may review with the Contractor their performance under the Contract. Performance reviews shall be conducted quarterly, semi-annually or annually depending on Contractor's past performance with the State. Performance reviews shall include, but not limited to, quality of products/services being delivered and provided, timeliness of delivery, percentage of completion of orders, the amount of back orders, status of such orders, accuracy of billings, customer service, completion and submission of required paperwork, the number of substitutions and the reasons for substitutions, and other requirements of the Contract.



Upon a finding of poor performance, which has been documented by Acquisition Services, the Contractor shall be given an opportunity to respond and take corrective action. If corrective action is not taken in a reasonable amount of time as determined by Acquisition Services, the Contract may be canceled for default. Delivery by the Contractor of unsafe and/or adulterated or off-condition products to any State agency is considered a material breach of Contract subject to the cancellation provisions contained herein.

#### **2.403 AUDIT OF CONTRACT COMPLIANCE/ RECORDS AND INSPECTIONS**

- (a) **Inspection of Work Performed.** The State's authorized representatives shall at all reasonable times and with ten (10) days prior written request, have the right to enter Contractor's premises, or any other places, where the Services are being performed, and shall have access, upon reasonable request, to interim drafts of Deliverables or work-in-progress. Upon ten (10) Days prior written notice and during business hours, the State's representatives shall be allowed to inspect, monitor, or otherwise evaluate the work being performed and to the extent that such access will not interfere or jeopardize the safety or operation of the systems or facilities. Contractor must provide all reasonable facilities and assistance for the State's representatives, so long as no security, labor relations policies and propriety information policies are violated.
- (b) **Examination of Records.** No more than once per year, Contractor agrees that the State, including its duly authorized representatives, until the expiration of seven (7) years following the creation of the material (collectively, the "Audit Period"), shall, upon twenty (20) days prior written notice, have access to and the right to examine and copy any of Contractor's books, records, documents and papers pertinent to establishing Contractor's compliance with the terms and conditions of the Contract and with applicable laws and rules, including the State's procurement rules, regulations and procedures, and actual performance of the 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 the Contract.
- (c) **Retention of Records.** Contractor shall maintain at least until the end of the Audit Period all pertinent financial and accounting records (including time sheets and payroll records, and information pertaining to the Contract and to the Services, equipment, and commodities provided under the Contract) pertaining to the Contract in accordance with generally accepted accounting principles and other procedures specified in this Section. Financial and accounting records shall be made available, upon request, to the State at any time during the Audit Period. If an audit, litigation, or other action involving Contractor's records is initiated before the end of the Audit Period, the records 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 shall meet to review each audit report promptly after issuance. The Contractor will respond to each audit report in writing within thirty (30) days from receipt of such report, unless a shorter response time is specified in such report. The Contractor and the State shall develop and agree upon an action plan to promptly address and resolve any deficiencies, concerns, and/or recommendations in such audit report.
  1. **Errors.** If the audit demonstrates any errors in the statements provided to the State, then the amount in error shall be reflected as a credit or debit on the next invoice and in subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried for more than four (4) quarterly statements. If a balance remains after four (4) quarterly statements, then the remaining amount will be due as a payment or refund within forty-five (45) days of the last quarterly statement that the balance appeared on or termination of the contract, whichever is earlier.
  2. In addition to other available remedies, the difference between the payment received and the correct payment amount is greater than ten (10%), then the Contractor shall pay all of the reasonable costs of the audit.

**2.5 Quality and Warranties****2.501 RESERVED****2.502 RESERVED****2.503 RESERVED****2.504 RESERVED****2.505 CONTRACTOR WARRANTIES**

The Contract will contain customary representations and warranties by the Contractor, including, without limitation, the following:

1. The Contractor will perform all services in accordance with high professional standards in the industry;
2. The Contractor will use adequate numbers of qualified individuals with suitable training, education, experience and skill to perform the services;
3. The Contractor will use its best efforts to use efficiently any resources or services necessary to provide the services that are separately chargeable to the State;
4. The Contractor will use its best efforts to perform the services in the most cost effective manner consistent with the required level of quality and performance;
5. The Contractor will perform the services in a manner that does not infringe the proprietary rights of any third party;
6. The Contractor will perform the services in a manner that complies with all applicable laws and regulations;
7. The Contractor has duly authorized the execution, delivery and performance of the Contract;
8. The Contractor is capable in all respects of fulfilling and shall fulfill all of its obligations under this contract.
9. The contract appendices, attachments, and exhibits identify all equipment and software services necessary for the deliverable(s) to perform and operate in compliance with the contract's requirements.
10. The Contractor is the lawful owner or licensee of any Deliverable licensed or sold to the state by Contractor or developed by Contractor under this contract, and Contractor has all of the rights necessary to convey to the state the ownership rights or license use, as applicable, of any and all Deliverables.
11. If, under this Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to such items as set forth in this Contract, Contractor shall assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.
12. The contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter this contract, on behalf of Contractor.



13. The Contractor is qualified and registered to transact business in all locations where required.
14. Neither the Contractor nor any Affiliates, nor any employee of either, has, shall have, or shall acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under this Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor shall notify the State within two (2) days of any such interest that may be incompatible with the interests of the State.
15. All financial statements, reports, and other information furnished by Contractor to the State as part of its response to the ITB or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Contractor as of the respective dates, or for the respective periods, covered by 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 changes in the business, properties, financial condition, or results of operations of Contractor. All written information furnished to the State by or behalf of Contractor in connection with this Contract, including its bid, is true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make such information not misleading.

#### **2.506 STAFF**

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

#### **2.507 RESERVED**

#### **2.508 RESERVED**

#### **2.509 RESERVED**

### **2.6 Breach of Contract**

#### **2.601 BREACH DEFINED**

Failure to comply with articles, sections, or subsections of this agreement, or making any false statement in this agreement will be considered a material breach of this agreement giving the state authority to invoke any and all remedies available to it under this agreement.

In addition to any remedies available in law and by the terms of this contract, if the Contractor breaches Sections 2.508, 2.509, or 2.510, such a breach may be considered as a default in the performance of a material obligation of this contract.

#### **2.602 NOTICE AND THE RIGHT TO CURE**

In the event of a curable breach by the Contractor, the State shall provide the Contractor written notice of the breach and a time period to cure said breach described in the notice. This section requiring notice and an opportunity to cure shall not be applicable in the event of successive or repeated breaches of the same nature or if the State determines in its sole discretion that the breach poses a serious and imminent threat to the health or safety of any person or the imminent loss, damage or destruction of any real or tangible personal property.



## 2.603 EXCUSABLE FAILURE

1. Neither party shall be liable for any default or delay in the performance of its obligations under the Contract if and to the extent such default or delay is caused, directly or indirectly, by: fire, flood, earthquake, elements of nature or acts of God; riots, civil disorders, rebellions or revolutions in any country; the failure of the other party to perform its material responsibilities under the Contract (either itself or through another contractor); 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 the non-performing party and its subcontractors are without fault in causing such default or delay, and 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, workaroud 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 best efforts to recommence performance or observance whenever and to whatever extent possible without delay provided such party promptly notifies the other party in writing of the inception of the excusable failure occurrence, and also of its abatement or cessation.
2. If any of the above enumerated circumstances substantially prevent, hinder, or delay performance of the services necessary for the performance of the State's functions for more than 14 consecutive 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 from an alternate source, and the State shall not be liable for payments for the unperformed services under the Contract for so long as the delay in performance shall continue; (b) the State may cancel any portions of the Contract so affected and the charges payable hereunder shall be equitably adjusted to reflect those services canceled; or (c) the Contract will be canceled without liability of the State to the Contractor as of the date specified by the State in a written notice of cancellation to the Contractor. The Contractor will not have the right to any additional payments from the State as a result of any excusable failure occurrence or to payments for services not rendered as a result of the excusable failure condition. Defaults or delays in performance by the Contractor which are caused by acts or omissions of its subcontractors will not relieve the Contractor of its obligations under the Contract except to the extent that a subcontractor is itself subject to any excusable failure condition described above and the Contractor cannot reasonably circumvent the effect of the subcontractor's default or delay in performance through the use of alternate sources, workaroud plans or other means.

## 2.7 Remedies

### 2.701 CANCELLATION

The State may cancel 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:

1. Material Breach by the Contractor. In the event that the Contractor breaches any of its material duties or obligations under the Contract, 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, 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 cancellation to the Contractor, cancel this Contract in whole or in part, for cause, as of the date specified in the notice of cancellation.

In the event that this Contract is cancelled for cause, in addition to any legal remedies otherwise available to the State by law or equity, the Contractor shall be responsible for all costs incurred by the State in canceling the Contract, including but not limited to, State administrative costs, attorneys fees and court costs, and any additional costs the State may incur to procure the services required by this Contract from other sources. All excess re-procurement costs and damages shall not be considered by the parties to be consequential, indirect or incidental, and shall not be excluded by any other terms otherwise included in the Contract.



In the event the State chooses to partially cancel this Contract for cause charges payable under this Contract will be equitably adjusted to reflect those services that are cancelled.

In the event this Contract is cancelled for cause pursuant to this section, and it is therefore determined, for any reason, that the Contractor was not in breach of contract pursuant to the provisions of this section, that cancellation for cause shall be deemed to have been a cancellation for convenience, effective as of the same date, and the rights and obligations of the parties shall be limited to that otherwise provided in the Contract for a cancellation for convenience.

2. Cancellation For Convenience By the State. The State may cancel this Contract for its convenience, in whole or part, if the State determines that such a cancellation is in the State's best interest. Reasons for such cancellation shall be left to the sole discretion of the State and may include, but not limited to (a) the State no longer needs the services or products specified in the Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Contract services no longer practical or feasible, and (c) unacceptable prices for additional services requested by the State. The State may cancel the Contract for its convenience, in whole or in part, by giving the Contractor written notice 30 days prior to the date of cancellation. If the State chooses to cancel this Contract in part, the charges payable under this Contract shall be equitably adjusted to reflect those services that are cancelled.
3. Non-Appropriation. In the event that funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available. The 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 project. If funds are not appropriated or otherwise made available, the State shall have the right to cancel this Contract at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of cancellation to the Contractor. The State shall give the Contractor written notice of such non-appropriation or unavailability within 30 days after it receives notice of such non-appropriation or unavailability.
4. Criminal Conviction. In the event the Contractor, an officer of the Contractor, or an owner of a 25% or greater share of the Contractor, is convicted of a criminal offense incident to the application for or performance of a State, public or private Contract or subcontract; or convicted of a criminal offense including but not limited to 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 the Contractor's business integrity.
5. 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, section 5, and Civil Service Rule 7. 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.

## 2.702 RIGHTS UPON CANCELLATION

**Termination Assistance.** If this Contract (or any Statement of Work issued under it) is terminated for any reason prior to completion, Contractor agrees to provide for up to six (6) months after the termination all reasonable termination assistance requested by the State to facilitate the orderly transfer of such Services to the State or its designees in a manner designed to minimize interruption and adverse effect. Such termination assistance will be deemed by the parties to be governed by the terms and conditions of this Contract (notwithstanding its termination) other than any terms or conditions that do not reasonably apply to such termination assistance. Such termination assistance shall be at no additional charge to the State if the termination is for Contractor's Default pursuant to Section 2.602; otherwise the State shall compensate Contractor for such termination assistance on a time and materials basis in accordance with the Amendment Labor Rates identified within this Contract agreement.

**2.703 LIQUIDATED DAMAGES**

- A. The State and the Contractor hereby agree to the specific standards set forth in this Contract. It is agreed between the Contractor and the State that the actual damages to the State as a result of Contractor's failure to provide promised services would be difficult or impossible to determine with accuracy. The State and the Contractor therefore agree that liquidated damages as set out herein shall be a reasonable approximation of the damages that shall be suffered by the State as a result thereof. Accordingly, in the event of such damages, at the written direction of the State, the Contractor shall pay the State the indicated amount as liquidated damages, and not as a penalty. Amounts due the State as liquidated damages, if not paid by the Contractor within fifteen (15) days of notification of assessment, may be deducted by the State from any money payable to the Contractor pursuant to this Contract. The State will notify the Contractor in writing of any claim for liquidated damages pursuant to this paragraph on or before the date the State deducts such sums from money payable to the Contractor. No delay by the State in assessing or collecting liquidated damages shall be construed as a waiver of such rights.
- B. The Contractor shall not be liable for liquidated damages when, in the opinion of the State, incidents or delays result directly from causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God, fires, floods, epidemics, and labor unrest; but in every case the delays must be beyond the control and without the fault or negligence of the Contractor.
- C. Liquidated damages will be assessed as follows: 5% of the premium per day for every day a policy is not in place after renewal date. (Typically October 1).

**2.704 RESERVED****2.705 SUSPENSION OF WORK**

The Contract Administrator may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contract Administrator determines appropriate for the convenience of the Government.

If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contract Administrator in the administration of this contract, or (2) by the Contract Administrator's failure to act within the time specified in this contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract.

A claim under this clause shall not be allowed:

- (1) For any costs incurred more than 20 days before the Contractor shall have notified the Contract Administrator in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and
- (2) Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.



## 2.8 Changes, Modifications, and Amendments

### 2.801 APPROVALS

The Contract may not be modified, amended, extended, or augmented except by a writing executed by the parties hereto, and any breach or default by a party shall not be waived or released other than in writing signed by the other party.

### 2.802 TIME EXTENTIONS

Time extensions for contract changes will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of performance as described in the statement of work. The change order granting the time extension may provide that the contract completion date will be extended only for those specific elements related to the changed work and that the remaining contract completion dates for all other portions of the work will not be altered. The change order also may provide an equitable readjustment of liquidated damages under the new completion schedule.

### 2.803 MODIFICATION

Acquisition Services reserves the right to modify this contract at any time during the contract term. Such modification may include changing the locations to be serviced, additional locations to be serviced, method or manner of performance of the work, number of days service is to be performed, addition or deletion of tasks to be performed, addition or deletion of items, and/or any other modifications deemed necessary. Any changes in pricing proposed by the Contractor resulting from the proposed changes are subject to acceptance by the State. Changes may be increases or decreases. **IN THE EVENT PRICES ARE NOT ACCEPTABLE TO THE STATE, THE CONTRACT SHALL BE SUBJECT TO COMPETITIVE BIDDING BASED UPON THE NEW SPECIFICATION.**

**The State reserves the right to add an item(s) that is not described on the item listing and is available from the Contract vendor.** The item(s) may be included on the Contract, only if prior written approval has been granted by Acquisition Services.

### 2.804 AUDIT AND RECORDS UPON MODIFICATION

DEFINITION: records includes books, documents, accounting procedures and practices, and other data, regardless of whether such items are in written form, electronic form, or in any other form

Contractor shall be required to submit cost or pricing data with the pricing of any modification of this contract to the Contract Administrator in Acquisition Services. Data may include accounting records, payroll records, employee time sheets, and other information the state deems necessary to perform a fair evaluation of the modification proposal. Contract Administrator or authorized representative of the state shall have the right to examine and audit all of the contractor's records, including computations and projections, related to:

1. The proposal for modification;
2. The discussions conducted on the proposal, including those related to negotiation;
3. Pricing of the modification; or
4. Performance of the modification.

Contractor shall make available at its office at all reasonable times the materials described in the paragraphs above.

If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement.

**2.805 CHANGES**

- (a) The Contract Administrator may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes:
  - (1) In the specifications (including drawings and designs);
  - (2) In the method or manner of performance of the work;
  - (3) In the Government-furnished facilities, equipment, materials, services, or site; or
  - (4) Directing acceleration in the performance of the work.
  
- (b) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contract Administrator that causes a change shall be treated as a change order under this clause; Provided, that the Contractor gives the Contract Administrator written notice stating:
  - (1) The date, circumstances, and source of the order; and
  - (2) That the Contractor regards the order as a change order.
  
- (c) Except as provided in this clause, no order, statement, or conduct of the Contract Administrator shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.



**APPENDIX A**

**CONTRACTOR'S TECHNICAL PROPOSAL**  
**(EXCERPTS)**



**MICHAEL DOWGIEWICZ  
CURRICULUM VITAE**

**POSITION:** Product Sales Manager  
Risk Management Service Line

**YEAR ENTERED  
INDUSTRY:** 1980

**EDUCATION:** B.S., B.A. Finance - Nichols College  
  
M.B.A., Advanced Management Program  
Michigan State University

**EXPERIENCE:** The ASU Group – Risk Management  
Product and Sales Management  
Client and Account Representative  
  
Ralph C. Wilson Agency  
Treasury/Risk Management Consulting  
  
Johnson & Higgins  
Vice President and Client Manager  
  
Manufacturers National Bank  
Vice President Risk Management & Corporate Security  
  
Technical expertise in the areas of:  
Risk Management                      Self-Insurance  
Finance & Banking                      Claim Management  
Employee Benefits                      Captive Insurance Companies  
Alternative Risk Management Programs

**ORGANIZATIONS:** Risk and Insurance Management Society  
Public Risk Management Association  
Association of Government Risk Pools  
Michigan & Minnesota Self-Insurers Association  
Detroit Economic Club  
American Bankers Association  
Michigan Association of Independent Agents



**CHRISTY ISHRAIDI  
CURRICULUM VITAE**

**POSITION:** District Manager  
Risk Management Service Line

**YEAR ENTERED  
INDUSTRY:** 1986

**EDUCATION:** Accounting courses  
University of Texas, El Paso, TX

Associate in Claims (AIC)  
Chartered Property and Casualty Underwriter (CPCU)

**EXPERIENCE:** Indiana Insurance Company  
Adjuster

Hastings Mutual Insurance Company  
Adjuster

Technical expertise in the areas of:

Workers' Compensation	General Liability
Automobile Liability	MI No Fault
Professional Liability	Errors & Omissions

**ORGANIZATIONS:** National Association of Independent Insurance Adjusters (NAIIA)  
Michigan Public Risk Managers Association  
Wisconsin Public Risk Managers Association  
Michigan Self-Insurers Association  
Indiana Self-Insurers Association  
Minnesota Self-Insurers Association  
Self-Insurance Institute of America  
International Order of Blue Goose  
Central Michigan Adjusters Association



**SUE OWENS  
CURRICULUM VITAE**

**POSITION:** Senior Claim Examiner  
Risk Management Service Line

**YEAR ENTERED  
INDUSTRY:** 1974

**EDUCATION:** Aetna Insurance Company, Claim Skill School  
Certificate in General Insurance  
Associate in Claims (AIC)

**EXPERIENCE:** Aetna Insurance Company  
Adjuster  
Senior Claim Representative  
  
Hastings Mutual Insurance Company  
Supervisor  
  
First Nevada  
Claim Administrator

Technical expertise in the areas of:

General Liability                      Products Liability  
Automobile Liability                  MI No Fault  
Automobile Physical Damage

**ORGANIZATIONS:** National Association of Independent Insurance Adjusters (NAIIA)  
Michigan Public Risk Managers Association  
Michigan Self-Insurers Association  
Self-Insurance Institute of America



**GLEN GRIFFIN  
CURRICULUM VITAE**

**POSITION:** Senior Claim Examiner, Risk Management

**YEAR ENTERED  
INDUSTRY:** 1985

**EDUCATIONAL LEVEL:** Graduated from Central Michigan University in 1984, with B.S. in Business Administration, Majoring in Finance.  
Completed auto estimating course at Vail Tech.  
Numerous liability training courses.  
Obtained AIC designation. Has completed six CPCU courses.

**EXPERIENCE:** Multi-line adjuster, specializing in casualty losses.  
Experience in general liability, products liability, auto and Commercial liability, as well as PIP and BI losses.



**LYNN EUBANKS  
CURRICULUM VITAE**

**POSITION:** Claim Examiner

**YEAR ENTERED  
INDUSTRY:** 1989

**EDUCATIONAL LEVEL:** High School graduate  
Fundamentals of Michigan No Fault Law  
Lawrence Technological University

**EXPERIENCE:** Experience with ASU for sixteen years in various capacities dealing with the claims handling process.

**ORGANIZATIONS:** Michigan Self-Insurance Association  
Central Michigan Adjusters Association  
Minnesota Self-Insurance Association  
Public Risk Management Association



**KAREN HUSULAK  
CURRICULUM VITAE**

**POSITION:** Claim Examiner

**YEAR ENTERED INDUSTRY:** 1997

**EDUCATIONAL LEVEL:** Graduate of Ferris State University, Big Rapids, MI –  
B.A. in Business Administration  
Davenport College of Business –  
Associates Degree in Accounting/Business  
Numerous seminars related to Workers Compensation

**EXPERIENCE:** Previously, a Workers' Compensation Specialist with SkillTech Employment, handling work-related injuries. Involved in filing and tracking workers' compensation and unemployment claims, tracking injuries, interviewing applicants and acting as a liaison between the insurance company and the employees. Previous experience in payroll and benefit administration and human resources.

**ORGANIZATIONS:** Central Michigan Adjusters Association



**KIMBERLY TOMASZEWSKI  
CURRICULUM VITAE**

**POSITION:** Claim Technician

**YEAR ENTERED  
INDUSTRY:** 2004

**EDUCATIONAL LEVEL:** High School graduate  
Degree in Administrative Management

**EXPERIENCE:** Experience with other programs, performing similar functions

**ORGANIZATIONS:** Michigan Self-Insurance Association



**MISTY ZELL  
CURRICULUM VITAE**

**POSITION:** Claim Technician

**YEAR ENTERED  
INDUSTRY:** 1998

**EDUCATIONAL LEVEL:** High School graduate

**EXPERIENCE:** Previously with Indiana Insurance Co. as a Workers' Compensation Technician

**ORGANIZATIONS:** Michigan Self-Insurance Association



**CHAD JOHNSON  
CURRICULUM VITAE**

**POSITION:** Accountant  
Risk Management Service Line

**YEAR ENTERED  
INDUSTRY:** 1994

**EDUCATION:** Associate of Science in Accounting  
St. Clair Community College  
  
Associate of Arts  
Brevard Community College  
  
Currently pursuing Bachelor Degree in Finance at  
Michigan State University

**EXPERIENCE:** The ASU Group – Risk Management Accountant

**Duties:**

Balance, Monitor, Maintain 30 Checking Accounts  
for Client Base  
Perform all Billing for Client Base  
Assist Clients with Financial Issues  
Assist The ASU Group Vice President of Program  
Administration

**Fins Seafood**

Assistant Manager

**Duties:**

Supervisor of Daily Operations  
Hiring, Training, and Supervision of Staff  
Accounts Payable  
Payroll  
Purchasing  
Maintained Operating and Imprest Money Market  
Accounts



# APPENDIX B

## CONTRACTOR'S PRICING

### AUTO LIABILITY COMPOSITE FEE SCHEDULE July 2005

**Note: Fees are guaranteed for a three year period.**

#### A. CLAIM SERVICES FEES

Per Accident	\$305.00
Incident Reports	\$ 27.50

Included are the Following Services:

- Cost of Checks
- One Monthly Loss Run, Electronic Distribution to Contract Administrator
- One Monthly Check Register, Electronic Distribution to Contract Administrator
- One Yearly Report for Actuarial Purposes, Electronic Distribution to Contract Administrator
- Bank Reconciliations
- Reporting to Excess Carrier(s)

#### B. ALLOCATED LOSS EXPENSE

Fees quoted in Section A do not include "Allocated Loss Expense" unless otherwise noted. Allocated Loss Expense includes but is not limited to the following items:

- Fees to attorneys for claims in suit and representation at hearings or pretrial conferences
- Fees to court reporters
- All court costs, court fees and court expenses
- Interest paid as a result of litigation
- Fees for service of process
- Costs of undercover operative and detective services (i.e. surveillance, alive and well surveys), costs of employing experts for the preparation of maps, professional photographs, accounting, chemical or physical analysis, diagrams
- Costs for employing experts for the advice, opinions or testimony concerning claims under investigation or in litigation or for which a declaratory judgment is sought
- Cost for independent medical examination and/or evaluation for rehabilitation and/or to determine the extent of the Company's liability
- Costs of legal transcripts of testimony taken at coroner's inquests, criminal or civil proceedings
- Costs of copies of any public records and/or medical records
- Costs of depositions and court reported and/or recorded statement
- Costs and expense of subrogation when referred to outside attorneys
- Costs of engineers, handwriting experts and/or any other type of expert used in the preparation of litigation and/or used on a one time basis to resolve disputes
- Any other similar cost, fee or expense reasonably chargeable to the investigation, negotiation, settlement or defense of a claim or loss or to the protection or perfection of the subrogation rights of the Company and/or the Client which must have the explicit prior approval of the Company
- Field investigations
- Vocational rehabilitation, medical management and associated services
- Medical cost containment services



**C. ADDITIONAL SERVICES**

Risk and actuarial projects, safety and loss control, field investigations, claim meetings, attendance at hearings, and special reports requested by the customer beyond those provided in the proposal and/or contract will be billed at prevailing hourly rates.