

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

April 14, 2009

CHANGE NOTICE NO. 3  
 TO  
 CONTRACT NO. 071B6200170  
 between  
 THE STATE OF MICHIGAN  
 and

NAME & ADDRESS OF VENDOR  Michigan Public Health Institute 2436 Woodlake Circle Suite 300 Okemos, MI 488649  <a href="mailto:Ldoele@mphi.org">Ldoele@mphi.org</a>	TELEPHONE (517) 324-6044 Larry Doele
	BUYER/CA (517) 335-4804 Douglas Collier
Contract Compliance Inspector: Ann Lindberg MDE School Meals Training – DIT/MDE	
CONTRACT PERIOD: From: <b>March 13, 2006</b> To: <b>March 12, 2010</b>	
TERMS N/A	SHIPMENT N/A
F.O.B. N/A	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A	
MISCELLANEOUS INFORMATION:	

**NATURE OF CHANGE(S):**

This contract is hereby EXTENDED for 11 additional months to allow for additional development of online training courses for the National School Lunch Program (NSLP). In addition, this request is to add funds for additional training modules to meet new United State Department of Agriculture (USDA) regulatory requirements in the areas of school meal compliance and nutrition education. These additional courses are all within the scope of this contract. Additional funds of \$60,500 are added for the above noted work. See attached listing of pricing and services.

**AUTHORITY/REASON(S):**

Per vendor and agency agreement and DMB approval and the approval of the State Administrative Board on April 7, 2009.

INCREASE: \$60,500.00

TOTAL REVISED ESTIMATED CONTRACT VALUE: \$280,500.00

On Demand Webcasting  
for  
Michigan Department of Education

Virtual CREE Grant

15 On Demand Webcasts for the Team Nutrition Tool Kit  
36 On Demand Webcast for USDA Child Nutrition Regulation Requirements

Larry Doele  
MPHI  
February 11, 2009

### Virtual CREE Grant

Virtual CREE Grant				
School Food Service Evaluation Process				
Services	Description	Unit Cost	Time	Total Cost
Filming/Production	Includes all the filming with two technicians and all the equipment	\$2,500.00/day	5 Days	\$12,500.00
Post Production	Includes all editing, inserting the PowerPoints, Graphic Art, Resources and uploading it to the server	\$110.00/hour	100 hours	\$11,000.00
Hosting	Provide all the Server Hosting for the On Demand Webcast of the Food Service Evaluation Process for the length of the Contract	\$1,200.00	Per year of Service	\$1,200.00
Maintenance	Monitor and maintain the Evaluation On Demand Webcast during the length of service. Provide regular scheduled reports of the usage. Change resources on a as needed basis. Install a registration system to the Webcast as needed.	\$1,500.00	Per year of Service	\$1,500.00
Fifteen Individual 1/2 Hour On Demand CREE Resource Webcasts				
Production	Production includes – set-up, recording the webcast, tear-down. It also includes all the usual equipment needed to produce a webcast. Simple editing of the webcast and uploading the webcast to the server.	\$400.00/per webcast	15 Webcasts	\$6,000.00
Hosting	Provide all the Server Hosting for the On Demand Webcast of the 14 On Demand Webcasts for the length of the Contract	\$1200.00	Per Year of Service	\$1,200.00
Maintenance	Monitor and maintain the 14 On Demand Webcast during the length of service. Provide regular scheduled reports of the usage. Change resources on a as needed basis. Install a registration system to the Webcast as needed.	\$1,500.00	Per Year of Service	\$1,500.00
<b>Total Cost</b>				<b>\$34,900.00</b>

**Twelve On Demand Webcasts for the Team Nutrition Tool Kit**

Fifteen Individual 1/2 Hour On-Demand Team Nutrition Tool Kit Webcasts				
Services	Description	Unit Cost	Unit	Total Cost
Production	Production includes – set-up, recording the webcast, tear-down. It also includes all the usual equipment needed to produce a webcast. Simple editing of the webcast and uploading the webcast to the server.	\$400.00/webcast	11 Webcasts	\$4,400.00
Production	Offsite filming, equipment and travel	\$1,400.00/webcast	1 Webcast	\$1,400.00*
Hosting	Provide all the Server Hosting for the On Demand Webcast of the 14 On Demand Webcasts for the length of the Contract	\$1,200.00	Per Year of Service	\$1,200.00
Maintenance	Monitor and maintain the 14 On Demand Webcast during the length of service. Provide regular scheduled reports of the usage. Change resources on a as needed basis. Install a registration system to the Webcast as needed.	\$1,500.00	Per Year of Service	\$1,500.00
<b>Total Cost</b>				<b>\$8,500.00</b>

\*One of the webcasts may be produced off site – possibly at Ford Field in Detroit, Michigan.

**36 On Demand Webcasts on USDA Child Nutrition Regulation Requirements**

Thirty six Individual 1/2 Hour On Demand USDA Child Nutrition Regulation Requirements Webcasts				
Services	Description	Unit Cost	Unit	Total Cost
Production	Production includes – set-up, recording the webcast, tear-down. It also includes all the usual equipment needed to produce a webcast. Simple editing of the webcast and uploading the webcast to the server.	\$400.00/per webcast	36 Webcasts	\$14,400.00
Hosting	Provide all the Server Hosting for the On Demand Webcast of the 14 On Demand Webcasts for the length of the Contract	\$1,200.00	Per Year of Service	\$1,200.00
Maintenance	Monitor and maintain the 14 On Demand Webcast during the length of service. Provide regular scheduled reports of the usage. Change resources on a as needed basis. Install a registration system to the Webcast as needed.	\$1,500.00	Per Year of Service	\$1,500.00
Total Cost				\$17,100.00

These prices are good for 60 days from the date of this proposal.

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

March 11, 2009

**CHANGE NOTICE NO. 2  
 TO  
 CONTRACT NO. 071B6200170  
 between  
 THE STATE OF MICHIGAN  
 and**

NAME & ADDRESS OF VENDOR  <b>Michigan Public Health Institute 2436 Woodlake Circle Suite 300 Okemos, MI 488649</b>  <a href="mailto:Ldoele@mphi.org">Ldoele@mphi.org</a>	TELEPHONE (517) 324-6044 <b>Larry Doele</b>
	BUYER/CA (517) 335-4804 <b>Douglas Collier</b>
Contract Compliance Inspector: Ann Lindberg <b>MDE School Meals Training – DIT/MDE</b>	
CONTRACT PERIOD: From: <b>March 13, 2006</b> To: <b>April 12, 2009</b>	
TERMS <b>N/A</b>	SHIPMENT <b>N/A</b>
F.O.B. <b>N/A</b>	SHIPPED FROM <b>N/A</b>
MINIMUM DELIVERY REQUIREMENTS <b>N/A</b>	
MISCELLANEOUS INFORMATION:	

**NATURE OF CHANGE(S):**

This contract is hereby **EXTENDED** for one additional month to allow time while Purchasing Operations requests to exercise a one year option. Additionally, the Contract Compliance Inspector is now Ann Lindberg.

**AUTHORITY/REASON(S):**

Per vendor and agency agreement and DMB approval.

**ESTIMATED CONTRACT VALUE REMAINS: \$220,000.00**

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

July 6, 2007

**CHANGE NOTICE NO. 1**  
**TO**  
**CONTRACT NO. 071B6200170**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF VENDOR  <b>Michigan Public Health Institute 2436 Woodlake Circle Suite 300 Okemos, MI 488649</b>	TELEPHONE (517) 324-6044 <b>Larry Doele</b>
	BUYER/CA (517) 335-4804 <b>Douglas Collier</b>
Contract Compliance Inspector: Melanie Ashley <b>MDE School Meals Training – DIT/MDE</b>	
CONTRACT PERIOD: From: <b>March 13, 2006</b> To: <b>March 12, 2009</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:	

**NATURE OF CHANGE(S):**

This contract is hereby amended to include additional National School Lunch Program requirements to include Development for Food Safety Plan based on the Hazard Analysis Critical Control Points Principles, Local Wellness Policy Development and Civil Rights training. All other terms, conditions and pricing remain the same. Please note that the buyer has been changed to Doug Collier.

**AUTHORITY/REASON(S):**

Per vendor and agency agreement.

**ESTIMATED CONTRACT VALUE REMAINS: \$220,000.00**

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

March 16, 2006

**NOTICE  
 OF  
 CONTRACT NO. 071B6200170  
 between  
 THE STATE OF MICHIGAN  
 and**

NAME & ADDRESS OF VENDOR  <b>Michigan Public Health Institute          2436 Woodlake Circle Suite 300          Okemos, MI 488649</b>	TELEPHONE (517) 324-6044 <b>Larry Doele</b>
	BUYER/CA (517) 241-2005 <b>Lisa Morrison</b>
Contract Compliance Inspector: Melanie Ashley <b>MDE School Meals Training – DIT/MDE</b>	
CONTRACT PERIOD: From: <b>March 13, 2006</b> To: <b>March 12, 2009</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:	

**The terms and conditions of this Contract are those enclosed. 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: \$220,000.00**

**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. 071B6200170  
 between  
 THE STATE OF MICHIGAN  
 and**

NAME & ADDRESS OF VENDOR  <b>Michigan Public Health Institute          2436 Woodlake Circle Suite 300          Okemos, MI 488649</b>	TELEPHONE (517) 324-6044 <b>Larry Doele</b>  BUYER/CA (517) 241-2005 <b>Lisa Morrison</b>
Contract Compliance Inspector: Melanie Ashley <b>MDE School Meals Training – DIT/MDE</b>	
CONTRACT PERIOD: From: <b>March 13, 2006</b> To: <b>March 12, 2009</b>	
TERMS <p style="text-align: center;"><b>N/A</b></p>	SHIPMENT <p style="text-align: center;"><b>N/A</b></p>
F.O.B. <p style="text-align: center;"><b>N/A</b></p>	SHIPPED FROM <p style="text-align: center;"><b>N/A</b></p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;"><b>N/A</b></p>	
MISCELLANEOUS INFORMATION:  <b>The terms and conditions of this Contract are those enclosed. 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>  <b>Estimated Contract Value: \$220,000.00</b>	

**THIS IS NOT AN ORDER:** This Contract Agreement is awarded on the basis of our inquiry bearing the ITB No. 07116200067. A Purchase Order Form will be issued only as the requirements of the State Departments are submitted to Acquisition Services. Orders for delivery may be issued directly by the State Departments through the issuance of a Purchase Order Form.

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

<b>FOR THE VENDOR:</b>  <hr/> <p style="text-align: center;"><b>Michigan Public Health Institute</b></p> <hr/> <p style="text-align: center;">Firm Name</p> <hr/> <p style="text-align: center;">Authorized Agent Signature</p> <hr/> <p style="text-align: center;">Authorized Agent (Print or Type)</p> <hr/> <p style="text-align: center;">Date</p>	<b>FOR THE STATE:</b>  <hr/> <p style="text-align: center;">Signature</p> <hr/> <p style="text-align: center;"><b>Greg Faremough, CPPB, Buyer Specialist</b></p> <hr/> <p style="text-align: center;">Name</p> <hr/> <p style="text-align: center;"><b>Strategic Business Development    Acquisition Services</b></p> <hr/> <p style="text-align: center;">Title</p> <hr/> <p style="text-align: center;">Date</p>
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## Table of Contents

<b>GLOSSARY</b>	<b>5</b>
<b>ARTICLE 1 – STATEMENT OF WORK (SOW)</b>	<b>6</b>
<b>1.0 Project Identification</b>	<b>6</b>
1.203 OTHER ROLES AND RESPONSIBILITIES	18
<b>ARTICLE 1B – EVALUATION INFORMATION</b>	<b>23</b>
<b>1B.100 Vendor Information</b>	<b>23</b>
1B.101 VENDOR NAME AND ADDRESS	23
1B.102 LOCATION ADDRESS	23
1B.103 ORGANIZATION AND YEAR	23
1B.104 VENDOR'S CONTACT	24
<b>1B.200 Qualifications</b>	<b>24</b>
1B.201 PRIOR EXPERIENCE	24
1B.202 STAFFING	27
<b>ARTICLE 1, ATTACHMENT C</b>	<b>42</b>
<b>ARTICLE 1, ATTACHMENT D</b>	<b>43</b>
<b>ARTICLE 1, ATTACHMENT E</b>	<b>45</b>
<b>ARTICLE 2 – GENERAL TERMS AND CONDITIONS</b>	<b>46</b>
<b>2.10 Contract Structure and Administration</b>	<b>46</b>
2.011 Definitions	46
2.012 Attachments and Exhibits	46
2.013 Statements of Work	46
2.014 Issuing Office	47
2.015 Contract Compliance Inspector	47
<b>2.020 Contract Objectives/Scope/Background</b>	<b>48</b>
2.021 Background	48
2.022 Purpose	48
2.023 Objectives and Scope	48
2.024 Interpretation	48
2.025 Form, Function and Utility	48
<b>2.030 Legal Effect and Term</b>	<b>48</b>
2.031 Legal Effect	48
2.032 Contract Term	49
<b>2.040 Contractor Personnel</b>	<b>49</b>
2.041 Contractor Personnel	49
2.042 Contractor Identification	51
2.043 Cooperation with Third Parties	51
2.044 Subcontracting by Contractor	51
2.045 Contractor Responsibility for Personnel	52

<b>2.050</b>	<b>State Standards</b>	<b>52</b>
2.051	Existing Technology Standards	52
2.052	PM Methodology Standards	52
2.053	Adherence to Portal Technology Tools	52
2.054	Acceptable Use Policy	53
<b>2.060</b>	<b>Deliverables</b>	<b>53</b>
2.061	Ordering	53
2.062	Software	53
2.063	Hardware	53
2.064	Equipment to be New and Prohibited Products	53
<b>2.070</b>	<b>Performance</b>	<b>54</b>
2.071	Performance, In General	54
2.072	Time of Performance	54
2.073	Reserved - Liquidated Damages	54
2.074	Bankruptcy	54
2.075	Reserved - Time is of the Essence	54
<b>2.080</b>	<b>Delivery and Acceptance of Deliverables</b>	<b>55</b>
2.081	Delivery of Deliverables	55
2.082	Contractor System Testing	55
2.083	Approval of Deliverables, In General	55
2.084	Process for Approval of Written Deliverables	56
2.085	Process for Approval of Custom Software Deliverables	57
2.086	Final Acceptance	57
<b>2.090</b>	<b>Financial</b>	<b>57</b>
2.091	Pricing	57
2.092	Invoicing and Payment Procedures and Terms	58
2.093	State Funding Obligation	59
2.094	Reserved - Holdback	59
2.095	Electronic Payment Availability	59
<b>2.100</b>	<b>Contract Management</b>	<b>59</b>
2.101	Contract Management Responsibility	59
2.102	Problem and Contract Management Procedures	59
2.104	System Changes	60
2.105	Reserved	60
2.106	Change Requests	60
<b>2.110</b>	<b>Records and Inspections</b>	<b>62</b>
2.111	Records and Inspections	62
2.112	Errors	62
<b>2.120</b>	<b>State Responsibilities</b>	<b>63</b>
2.121	State Performance Obligations	63
<b>2.130</b>	<b>Security</b>	<b>63</b>
2.131	Background Checks	63
<b>2.140</b>	<b>Reserved</b>	<b>63</b>
<b>2.150</b>	<b>Confidentiality</b>	<b>63</b>
2.151	Freedom of Information	64
2.152	Confidentiality	64
2.153	Protection of Confidential Information	64

2.154	Exclusions	64
2.155	No Implied Rights	65
2.156	Remedies	65
2.157	Security Breach Notification	65
2.158	Survival	65
2.159	Destruction of Confidential Information	65
<b>2.160</b>	<b>Proprietary Rights</b>	<b>65</b>
2.163	Rights in Data	67
2.164	Ownership of Materials	67
2.165	Standard Software	67
2.166	Pre-existing Materials for Custom Software Deliverables	67
2.167	General Skills	67
<b>2.170</b>	<b>Warranties And Representations</b>	<b>68</b>
2.171	Warranties and Representations	68
2.175	DISCLAIMER	71
2.176	Consequences For Breach	71
<b>2.180</b>	<b>Insurance</b>	<b>71</b>
2.181	Liability Insurance	71
<b>2.190</b>	<b>Indemnification</b>	<b>74</b>
2.191	Indemnification	74
2.192	Continuation of Indemnification Obligations	75
2.193	Indemnification Procedures	75
<b>2.200</b>	<b>Limits of Liability and Excusable Failure</b>	<b>75</b>
2.201	Limits of Liability	75
2.202	Excusable Failure	76
2.203	Disaster Recovery	76
<b>2.210</b>	<b>Termination/Cancellation by the State</b>	<b>76</b>
2.211	Termination for Cause	77
2.212	Termination for Convenience	77
2.213	Non-Appropriation	77
2.214	Criminal Conviction	78
2.216	Rights and Obligations Upon Termination	78
2.217	Reservation of Rights	79
2.218	Contractor Transition Responsibilities	79
2.219	State Transition Responsibilities	79
<b>2.220</b>	<b>Termination by Contractor</b>	<b>80</b>
2.221	Termination by Contractor	80
<b>2.230</b>	<b>Stop Work</b>	<b>80</b>
2.231	Stop Work Orders	80
2.232	Cancellation or Expiration of Stop Work Order	80
2.233	Allowance of Contractor Costs	80
<b>2.240</b>	<b>Reserved</b>	<b>80</b>
<b>2.250</b>	<b>Dispute Resolution</b>	<b>80</b>
2.251	In General	80
2.252	Informal Dispute Resolution	81
2.253	Injunctive Relief	81
2.254	Continued Performance	81

<b>2.260</b>	<b>Federal and State Contract Requirements</b>	<b>81</b>
2.261	Nondiscrimination	81
2.262	Unfair Labor Practices	82
2.263	Workplace Safety and Discriminatory Harassment	82
<b>2.270</b>	<b>Litigation</b>	<b>82</b>
2.271	Disclosure of Litigation	82
2.272	Governing Law	83
2.273	Compliance with Laws	83
2.274	Jurisdiction	83
<b>2.280</b>	<b>Environmental Provision</b>	<b>83</b>
2.281	Environmental Provision	83
<b>2.290</b>	<b>General</b>	<b>84</b>
2.291	Amendments	84
2.292	Assignment	84
2.293	Entire Contract; Order of Precedence	84
2.294	Headings	85
2.295	Relationship of the Parties (Independent Contractor Relationship)	85
2.296	Notices	85
2.297	Media Releases and Contract Distribution	85
2.298	Reformation and Severability	86
2.299	Consents and Approvals	86
2.300	No Waiver of Default	86
2.301	Survival	86
2.302	Covenant of Good Faith	86
2.303	Permits	86
2.304	Website Incorporation	86
2.305	Taxes	86
2.306	Prevailing Wage	87
2.307	Call Center Disclosure	87
2.308	Future Bidding Preclusion	87
<b>2.310</b>	<b>Reserved</b>	<b>87</b>
<b>2.320</b>	<b>Extended Purchasing</b>	<b>87</b>
2.321	Reserved - MiDEAL	87
<b>2.330</b>	<b>Federal Grant Requirements</b>	<b>87</b>
2.331	Federal Grant Requirements	87

## Glossary

<b>AICC</b>	<b>Aviation Industry Computer-Based Training Committee</b>
<b>CEPI</b>	<b>Center for Education Performance and Information</b>
<b>CNAP</b>	<b>Child Nutrition Application Program</b>
<b>DIT</b>	<b>Department of Information Technology</b>
<b>DMB</b>	<b>Department of Management and Budget</b>
<b>FNS</b>	<b>Food and Nutrition Services</b>
<b>FSMC</b>	<b>Food Service Management Companies</b>
<b>ILS</b>	<b>Internet Learning System</b>
<b>IT</b>	<b>Information Technology</b>
<b>ITB</b>	<b>Invitation to Bid</b>
<b>LEA</b>	<b>Local Educational Agency</b>
<b>LMS</b>	<b>Learning Management System</b>
<b>MDE</b>	<b>Michigan Department of Education</b>
<b>MiLP</b>	<b>Michigan LearnPort</b>
<b>MVU</b>	<b>Michigan Virtual University</b>
<b>NSLP</b>	<b>National School Lunch Program</b>
<b>OGCSS</b>	<b>Office of Grants Coordination and School Support</b>
<b>PSA</b>	<b>Public School Academy</b>
<b>SBP</b>	<b>School Breakfast Program</b>
<b>SCORM</b>	<b>Sharable Content Object Reference Model</b>
<b>SFA</b>	<b>School Food Authorities</b>
<b>SOW</b>	<b>Statement of Work</b>
<b>USDA</b>	<b>United States Department of Agriculture</b>

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

### **1.0 Project Identification**

#### **1.001 PROJECT REQUEST**

Michigan Public Health Institute – Interactive Solutions Group (MPHI – ISG) though this proposal will repurpose the National School Lunch Program (NSLP) from the instructor led program of today to an online learning program. The online learning program developed by MPHI-ISG will be able to be accessed through Michigan LearnPort (MiLP) and fully function on any Learning Management System (LMS) or Internet Learning System (ILS) which is AICC and SCORM compliant. This LMS/ISL could be Campus K-12, one hosted by Department of Information Technology (DIT) or the MPHI – ISG LMS.

#### **1.002 BACKGROUND**

MPHI – ISG will build the Online Learning Courses to meet the needs of the Michigan Department of Education (MDE), Public School Academy (PSA) and the Local Education Agency (LEA) staffs, who are the primary stake holders for the courses. MPHI – ISG will also be cognizant of both the students and the parents of students who participate in the National School Lunch Program (NSLP). Meeting the specifications of the NSLP will assist the students in receiving a nutritious, appetizing and affordable meals which lead to better learning.

The five online learning courses will be built too specifically increase the LEAs and PSAs levels of compliance with the NSLP. Also the courses will be built to decrease the administrative errors of both the LEA and PSA staffs. The five courses will:

- Increase compliance in the program
- Decrease the amount of dollars returned to the NSLP
- Teach PSA staff on a as needed basis dealing with issues of high turnover
- Eliminate any barriers of access or availability through 24/7 access
- Teach to the specific skills needed to meet all compliance requirements of the State of Michigan and the United States Department of Agriculture (USDA)

MPHI –ISG will work with Michigan Virtual University (MVU) to ensure that the Online Courses will function properly within the MiLP and their online LMS. The MPHI – ISG Online Courses will be functional on any LMS that is AICC and SCORM compliant.

The five Online Courses will be built to the existing specification of the current NSLP instructor-led courses which are presently a day long. The content will be repurposed will the assistance of Subject Matter Experts (SME) provided by the MDE. The courses will include the following subjects:

- Application
- Certification
- Verification
- Meal Counting and Claiming
- Meal Documentation

## 1.1 Scope of Work and Deliverables

### **1.101 IN SCOPE**

MPHI – ISG will meet the following requirements:

- Provide MDE an Online Course consisting of five modules which will be repurposed from the existing course information
- Provide all the documentation and graphical design for the online delivery of the course
- Integrate the course within MiLP
- Work with MiLP to provide any user support for the courses
- Work with Campus K-12 to ensure that the Online Course works on the system and that the course can be accessed through MiLP using the MiLP logon and password only
- Ensure that all student information including registration, initiation of sessions, course completion and assessment score information is effectively transferred to Campus K-12 in order that reporting requirements are met.
- Provide Help pages where appropriate
- Provide Technical Support to MiPL and/or Campus K-12 so that they can effectively implement the completed course so that it functions correctly on MVU's LMS system
- Provide annual Course Upgrades as required by MDE

In addition later in the Proposal MPHI –ISG will outline how MDE can use the MPHI- ISG LMS to support their Online Course. This would include:

- LMS services and technical support
- Technical Support to DIT if MDE decides to place the course on DIT's ILS
- Help Desk Services

### **1.102 OUT OF SCOPE**

MPHI – ISG understands that it will not be responsible to provide course content for the development of the course. We will not provide the NSLP Subject Matter Experts.

### **1.103 ENVIRONMENT**

MPHI – ISG has extensive experience working with the State of Michigan and the DIT and is fully experienced in working with individuals using the State of Michigan's environment. Not only has MPHI – ISG E-Learning Team built sixteen (16) courses that needed to meet the State's desktop requirements, but we have also work with the DIT in conjunction with a number of other Michigan Department of Community Health (MDCH) projects. These projects include HIPAA Security, the Medicaid Eligibility Interface with Blue Cross/Blue Shield, and presently we are working with the MDCH to build a direct user logon from their Intranet portal to a MDCH Learning Center that we are presently building for their employees.

All these corporative projects were built or are being built using the software tools that DIT is presently using or has approved to be used. We agree that if MPHI - ISG needs to deviate from the tools listed in the bid document MPHI - ISG will work with DIT to use application tools that are acceptable by both DIT and MPHI – ISG.

## 1.104 WORK AND DELIVRABLES

### I. Executive Summary

MPHI – ISG is excited to present our bid to assist the State of Michigan Department of Education in developing five training modules in the National School Lunch Program (NSLP). MPHI – ISG is a strong believer in online learning to provide Michigan’s workforce with the information they need to do their jobs at the time that they need that information. MPHI –ISG feels this is very evident in the sixteen (16) courses they have built for MDCH and their other customers over the past four years, initially starting with MVU and then moving to MPHI – ISG. (To access 13 of the online courses please go to [www.training.mihealth.org](http://www.training.mihealth.org).) Each online course is built with the training of the end user in mind to ensure that they have the information they need to perform their jobs well. MPHI – ISG uses a strong Instructional Design method to build their online courses. Our Instructional Designer repurposes the course materials into an online format that is understandable to all learners so that they can increase their on-the-job performance.

MPHI – ISG feels that this is evident by the student satisfaction rating of over 92% given by our students through customer satisfaction surveys attached to our courses. On an annual basis, we have over 4000 students register to take our courses, which would make us the 12<sup>th</sup> largest Community College out of 28 Community Colleges in Michigan if MPHI –ISG was a Community College in the State. These 4000 plus registered students have taken over 12,000 individual courses in our LMS. So the 92% student satisfaction rating along with the 100% customer retention rating for all customers who have used MPHI – ISG services over the past four years indicates how our students and customers feel about MPHI – ISG’s courses and services.

MPHI – ISG’s online course build philosophy is:

- Focused on performance improvement
- Supplemented by the right support tools or job aids
- Designed and delivered in a manner that is consistent with the adult learning process

The MPHI – ISG approach focuses on tasks and accomplishments, allowing us to design learning interventions that give people what they need, when they need it, to do their jobs. Our philosophy is based on the following key elements that influence end user performance:

***People learn best when they know what their organization is trying to accomplish and what their individual roles are within this context.*** The online courses will provide a clear statement of the MDE School Meals Training goals, how these goals will assist the school in meeting its goals and how each employee in the School Meals Program can assist in the process.

***People learn best when they are shown how to do their specific job tasks, not generic tasks or generic systems knowledge.*** When generic material is used in the online course, the connection between what is taught and learners’ on-the-job tasks is frequently weak. When the online experience models the work environment by focusing on the specific tasks required in the end users’ job roles, learners can more easily absorb training and translate what they have learned to their job performance.

***People learn best when they have the opportunity to practice using the same performance support materials that they will use back on the job.*** Online training events, in themselves, are not sufficient to take learners to competency. However, if the tools and references available for on-the-job support are introduced during the online training, learners are able to practice the new tasks using these tools. This ensures consistency in performance from the learning environment back to the job.

MPHI – ISG uses the adult training model in building their online courses. This model focuses on all the aspects of adult learning to ensure that each learner will be able to grasp all the information they need to know to do their job well when they are finished with the online course

**Prepare Me** - In this phase, the learner gains an understanding for the organizational context of the new skills they will be learning. They learn about the business reasons for the upcoming changes, and some of the details of the kinds of changes that will take place.

**Tell Me** - In this phase, the learners are introduced to the overall processes of their jobs. They are also introduced to the specific knowledge and skills that they will be expected to learn in the online course.

**Show Me** - In this phase, the learner receives demonstrations of the task to be performed. The learner will be walked through the process they are learning, and they gain a full understanding of what will be expected of them. One of the purposes of this phase is to point out to the learner the performance support tools provided that will be available to them back on the job to help them perform successfully.

**Let Me** – In this phase, learners are provided the opportunity to practice the tasks being taught. The learner will be tested on their knowledge of the process with learning checks throughout the online course.

**Help Me** - This phase begins during the learning event, as trainees are introduced to the variety of support tools available, and continues afterwards to provide support for on-the-job performance. This support may include procedural job aids, online help, and Help Desk assistance.

Using this methodology MPHI – ISG is able to build the most effective and efficient online courses for their customers.

## **II.**

### **A. Content Development Methodology**

To support the development efforts, MPHI – ISG along with its partner RWD Technologies has created numerous internal processes specifically designed to provide the structure necessary to ensure that our online learning content and presentation are effective and efficient. These processes include:

- Project Management
- Instructional Design
- Continual Customer Review and Approval
- Software Development and Documentation
- Strong Quality Control

### **Project Management**

Every successful project is delivered through planning and strong project management. MPHI – ISG has developed an initial project plan (see Attachment E). This plan will be refined once the bid has been given. MPHI – ISG uses the project plan and the project management system to ensure that all aspects of the project are on time and within budget. All activities of the online course build are managed through the project plan. If we identify an issue, we document it on the Issue Log along with a plan to eliminate the issue. Issue Logs are kept on all aspects of the project so that nothing is missed or forgotten. The project plan is reviewed at least weekly among all the participants in the online course build. This ensures that all parties are aware of what is happening on the project and have a full understanding of what is to be completed and who is responsible to

complete the task. MPHI – ISG and its subcontractor RWD Technologies will review and work the project plan daily if necessary to make sure all deadlines are met within the time frame that is agreed upon by MPHI – ISG and MDE. With strong project management MPHI – ISG has been able to meet all project deadlines and keep all their online course builds within budget.

## **Instructional Design**

MPHI – ISG believes that for a successful online course you need a strong Instructional Designer to ensure that your course meets the objectives outlined by our customers. Our Instructional Designer works closely with the subject matter experts to repurpose the instructor led material to the online format. The Instructional Designer ensures that the course follows the adult learning model and is at a reading level (usually 7<sup>th</sup> grade) that meets most learners' needs. The instructional Designer will also develop the course to SCORM and AICC standards. The course will also meet ADA 508 compliance.

The Instructional Designer works closely with all participants on the course build team making sure that the course has the “look and feel” needed, that the course’s narrative teaches the subject matter to all learners, that the narrative and the graphic meet the customer’s needs and that the timelines are being met. The Instructional Designer is also the individual who works with the media specialist who put the course together.

The Instructional Designer will produce storyboards in a Word document that all subject matter experts will review. Once the storyboards are accepted by the customer, the information will be placed in the online course for a beta review. The Instructional Designer will collect all the comments on the beta review and share them with the total team. Once all is decided on the comments and the course, a final course will be developed for publication.

## **Continual Customer Review**

A successful project is dependent on customer input and continual feedback. The MPHI – ISG team works closely with the customer on all aspects of the course build. The customer, through their project team and their subject matter experts, are central to the success of the project. The customer will review and approve the “look and feel” of the online course. MPHI – ISG will provide the customer Word document storyboards of each module for their review and comment. Changes will be produced for each module storyboard until agreement is reached on the narrative and graphics. The finished course will be shared to the total team in a beta format for review and comment. The team will view the course as an online version as any learner would experience the finished product. The team will be able to comment on any issues they see electronically, directly into the course. All the comments will be produced for the team to review. Final changes will then be made to the course, at which time the team will again review the course to determine that the changes have been made and are acceptable.

## **Software Development and Documentation**

MPHI – ISG software development and documentation is a continual process from the first team meeting to the completed course. All aspects of the course are documented and when finished are the property of MDE. As described above, storyboards are developed for each module. Once the storyboards are approved, they are integrated into the online course. Once all the modules are integrated, a beta version is developed for full review and electronic comment by the total team. Once all the changes have been approved and implemented, the course is ready for implementation on the LMS.

## **Strong Quality Control**

The foundation of excellent customer satisfaction is a strong quality control process. MPHI – ISG feels that their quality control program leads to the excellent service we have been able to provide our customers. MPHI – ISG has a six level quality control process.

The first level is with the Instructional Designer, who carefully reviews and checks their own files to ensure that they meet requirements and are error-free.

The second level is with the Integrator. The Integrator ensures that styles on the web pages are applied appropriately; graphics appear where they are supposed to, multimedia files are pulled in at the appropriate places, and that links from the index and other pages pull up the right pages.

The third level is the system testing. Prior to the team reviewing the modules, the product to date is tested to make sure that all pages, learning checks and tests work as designed.

The fourth level is a review by the Instructional Designer and the MPHI – ISG Project Lead. They review the course to design specs and determine that it is ready for the customer team to review.

The fifth level is the customer review to ensure that all aspects of the course function to the design and approval of customer. This would be the beta version, which will be available on an LMS for a true user experience. Through the Star Tracker function, all reviewers will be able to electronically review and comment on the course.

The sixth and final level of review is after the final changes have been made to the course. This review ensures that all final changes have been made to the customer's satisfaction. It begins with a review by the MPHI – ISG team and then proceeds to a MPHI – ISG is excited to present our bid to assist the State of Michigan Department of Education in developing five training modules in the National School Lunch Program (NSLP). MPHI – ISG is a strong believer in online learning to provide Michigan's workforce with the information they need to do their jobs at the time that they need that information. MPHI –ISG feels this is very evident in the sixteen (16) courses they have built for MDCH and their other customers over the past four years initially starting with MVU and then moving to MPHI – ISG. (To access 13 of the online courses please go to [www.training.mihealth.org](http://www.training.mihealth.org) ) Each online course is built with the training of the end user in mind to ensure that they have the information they need to perform their jobs well. MPHI – ISG uses as strong Instructional Design method to build their online courses. Our Instructional Designer repurposes the course materials into an online format that is understandable to all learners so that they can increase their performance on their jobs.

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The final and sixth level of review is after the final changes have been made to the course. This review ensures that all final changes have been made to the customer’s satisfaction. It begins with a review by the MPHI – ISG team and then proceeds to a review by MDE.

Following the above five specific processes will guarantee that MDE will receive they will have an employee centered online curriculum, they will be involved in the process at all times meeting and reviewing the project status bi-weekly if necessary and they will all source codes necessary to maintain the curriculum. In addition there will be a strong test plan assuring that the curriculum functions in the manner expected. Lastly with MPHI – ISG’s strong project management system the project will finish on time and within budget.

## **B. Five Modules**

MPHI – ISG understands that the course will consist of five modules as outline in the bid proposal. Also it is understood that these modules will consist of specific sections outlining all the aspects of the module. MPHI – ISG team will work with the MDE project staff and the subject matter experts to develop the narrative and appropriate graphics for each module. Each module and its timetable will be outlined in the overall Project Plan and both the MDE team and the MPHI – ISG team will work against the outlined timetable to ensure that the goals of the project plan are met.

## **C. Additional Requirements**

The modules will be developed to average 1.5 hours in length for the learner to complete. Throughout the module where appropriate knowledge checks will be added so that the learner remembers the important learning aspects of that section. The learners will be given an assessment within each module. When the learner completes the assessment they will be given the questions that they missed.

A customer survey will be added to each module. The survey topics will be determined by the MDE team. This will assist in knowing who is taking the course, if the course is teaching what needs to be taught and if the learners have comments that would assist us as the courses are upgraded.

If additional information is helpful to the teaching within the modules that can be linked to or are available in a PDF they will be linked to from the course narrative.

Monthly usage reports will be provided to MDE. These reports will define the new users of the course and how often users returned to the course. These reports will be developed by module and will have both monthly and year to date data. Also the reports will outline the survey results for each modules including comments on the course.

Annual updates will be provided for all modules. These updates will include any changes made to the program and also suggestions that are made in our survey comments. All modules and any upgrades will meet AICC, SCORM and ADA Section 508 requirements.

MPHI –ISG will work with any vendor that MDE choose to register and host their modules. Larry Doele the MPHI – ISG Project Manager has a very good working relationship with MVU and MiLP. Larry worked for MVU and was responsible for their Healthcare Courses prior to the move to MPHI. Therefore Larry has worked with the MiLP technical staff and foresee no issues with MiLP registering the learners for the course. The modules will all meet AICC and SCORM compliance and will function properly on Campus K-12 LMS. If MDE choose to have the modules hosted on MPHI – ISG’s LMS we know that the courses will function properly. Also we see no issues in interfacing with MiLP for the registration process.

## **D. Optional Requirements**

MPHI – ISG provides LMS services to their existing customers. The LMS can be accessed at <http://learning.mihealth.org/SOLO/> At present the LMS hosts 16 courses. In 2005 there were over 4000 registered students on the LMS. This number of students would have made MPHI – ISG the 12<sup>th</sup> largest

Community College in the State of Michigan if we were a Community College. Those 4000 plus registered students took over 14,000 classes through the LMS in 2005.  
review by MDE.

Following the six specific processes outlined above will guarantee that MDE will receive an employee centered online curriculum. Also MDE will be involved in the process at all times meeting and reviewing the project status bi-weekly. In addition, there will be a strong test plan assuring that the curriculum functions in the manner expected. Lastly, with MPHI – ISG’s strong project management system the project will finish on time and within budget.

The MPHI - ISG SOLO LMS has the ability to provide MDE the following features:

- Learning Features
  - Web Based access
  - Rapid Deployment
  - Housing Online, Stand-up, and any other training activities
  - Customizable to the State of Michigan Civil Service Needs
  - SCORM and AICC Compliant
  
- Student Features
  - Single Point of Entry
  - Individual Learning Paths for all learners
  - Single Learning Path for all Blended Learning Options
  - Cross Train to other Learning Groups
  - Online Collaboration Tools
  - Manage Learning Resources such as job aides, manuals, web-links, quick reference guides and books
  - Track Learning Progress
  - Manage instructor-led events, seminars, webinars and video conferences
  
- Administrative Features
  - Rapid Management Tools
  - Multi-level Management of various participants
  - Unlimited Cascading Learning Groups
  - Managed and Self Registration Capabilities
  - Help Desk
  - Standard & Custom Report
  - Multi-application Integration
  - Manages multiple Learning Resources

The LMS is available 24 hours per day, 7 days per week, except for scheduled maintenance. In 2005 we maintained a 99.9 % up time for the LMS. There were no major issues with learners accessing the LMS. The LMS is easily able to handle over 7500 concurrent users. As stated earlier, MPHI –ISG does not see any issues interfacing with MiLP if MDE chooses to use them for registration purposes. Also the MPHI – ISG would be able to provide registration capabilities.

MPHI – ISG will provide hosting pricing as part of a pricing package for the bid. The proposed pricing/bid is in **Article 1: Attachment A Table 11**.

MPHI – ISG will provide support to DIT if they choose to host the modules. This support will be both by phone and onsite as needed.

MPHI – ISG will provide to MDE a fully functional online course. Prior to delivery, all “bugs” will be fixed. MDE will receive a course that works smoothly on the system outlined earlier in the bid. Any upgrade/system release will follow a predetermined schedule as worked out by MPHI –ISG and MDE.

MPHI – ISG provides Help Desk services for all online courses that are hosted on their LMS. The hours for the Help Desk are from 8:00 AM to 5 PM, Monday thru Friday, except for holidays. The Help Desk service is initiated through email but will include both telephone and desktop conferencing on an as-needed basis. The Help Desk will respond on average within two hours of the initial contact. In most cases it is within a half-hour or less. The cost of the Help Desk service is included in the hosting fees charged to host the modules. Please see our hosting pricing included in the bid.

## 1.2 Roles and Responsibilities

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

MPHI – ISG and their subcontractor RWD Technologies have successfully built and maintained 16 courses over the past four years. The process they utilize, as described earlier in the proposal, has proven to bring all their course builds in on time and within budget. To show their satisfaction MPHI –ISG’s customers continue to request the same team on new course builds.

The team will be lead by Larry Doele, Executive Account Manager for MPHI – ISG. Larry Doele will have full responsibility for the Project and the MPHI – ISG team will directly report to him. Larry will be the Project Manager for the course build. Larry will be a single point of contact and will remain on the project from beginning thru the expected five year life of the project. Larry Doele has over thirty (30) years of Management and Customer Service experience. Over Larry’s career he has manage many large project implementations and has the experience to build strong project plans, anticipate issues before they happen, and develop and implement alterative plans to ensure successful projects. Larry Doele has project managed all course builds for MVU Healthcare and MPHI –ISG. Larry’s resume can be found in Section 1B.202 Staffing.

Herman McGowan, Senior Instructional Designer for RWD Technologies and he will be the Instructional Designer on the project. Herman will also lead the RWD team for the project. Herman has been an Instructional Designer for four years and has experience in building multiple online courses for many different customers. Herman has worked with MPHI – ISG on the majority of course builds. Herman works closely with Larry and the customer to ensure all the courses effectively communicates the training information to the learner. Herman’s resume can be found in Section 1B.202 Staffing.

Tony Spenn, Senior Multimedia Specialist for RWD Technologies will be responsible for all graphics and the technical aspects of the course build. Tony will integrate all the narrative and graphics into the course. Tony has over seven years of experience in Multimedia and also has worked on the majority of MPHI –ISG courses. Tony’s resume can be found in Section 1B.202 Staffing.

Jon Newberg also with RWD Technologies will be the Editor on the project. Jon has over four years experience in editing and has work on many of the MPHI –ISG courses.

Jon's resume can be found in Section 1B.202 Staffing.

### 1.202 STATE STAFF, ROLES, AND RESPONSIBILITIES

MPHI – ISG understands and accepts the roles and responsibilities of the State Staff.

### 1.203 OTHER ROLES AND RESPONSIBILITIES

MPHI – ISG understands and accepts the roles and responsibilities of the Other Staff.

State staff assigned to this project are:

Name	Organization/title	Phone	Email
Barb Campbell	MDE, Project Manager	517-373-2077	<a href="mailto:CampbellB@michigan.gov">CampbellB@michigan.gov</a>
Louis Burgess	MDE, Technical Project Manager	517-373-1806	<a href="mailto:BurgessL@michigan.gov">BurgessL@michigan.gov</a>
Linda Pung	Client Services Director, DIT/CEPI	517-241-2368	<a href="mailto:pungle@michigan.gov">pungle@michigan.gov</a>
To Be Determined	School Meals Technical Consultant		

#### MDE Department Responsibilities

Any MDE resources provided shall be used only for purposes of this project.

- Business area staff as needed
- The School Meals Technical Consultant will :
  - Create and manage the Project Activity and Timelines
  - Provide technical expertise in the training materials development and serve as the Subject Matter Expert of the NSLP
  - Advise and provide technical assistance to the ILS curriculum development contractor
  - Create a PowerPoint presentation with notes and provide to the approved Vendor for the ILS
  - Assess and evaluate the ILS deliverables (designs, modules, documentation, etc.)
  - Develop test scenarios for the ILS (acceptance testing)
  - Make recommendations for improvements

### 1.203 OTHER ROLES AND RESPONSIBILITIES

Campus K-12 and MiLP will spend up to eight hours with the approved Vendor to ensure the created content will be accessible through the MiLP Catalog.

MiLP through the Michigan Virtual University will be responsible for the following:

- Registration of Users
- User ID and Password Maintenance-through MVU administrative roles
- Course completion tracking using ILS provided data
- Users click on a "Launch" button in MiLP to get to the course
- Users will be able to access the ILS courses through the MiLP Catalog
- MiLP Help

Name	Organization/title	Phone	Email
Ryan Wheeler	Campus K-12 Michigan LearnPort (MiLP)	905-831-6843	<a href="mailto:rwheeler@campusk12.com">rwheeler@campusk12.com</a>
Dave Myers	Michigan Virtual University & Michigan LearnPort (MiLP)	O: 517-664-5468 C: 586-295-6546	<a href="mailto:dmyers@mivu.org">dmyers@mivu.org</a>
To Be Determined	Subject Matter Experts		

The vendor shall work with MiLP to develop and maintain an interface that will exchange user registration, course completion, and assessment score information between the ILS and MiLP.

1.3 Project Plan

**1.301 PROJECT PLAN MANAGEMENT**

MPHI – ISG supports strong planning procedures which lead to a successful project. MPHI – ISG will work closely with MDE to build an overall project plan and within the overall plan have sub-plans for all the deliverables. All project plans will get the approval of MDE prior to any work being performed. MPHI – ISG built a basic project plan based on the information within the RFP it can be found in Attachment Article 1 Attachment E.

**1.302 REPORTS**

Continual communication leads to a successful project. MPHI – ISG strongly support frequent communication. On all their course builds they meet at least biweekly with the customer to guarantee open communication and understanding of what needs to be completed and who will complete it.

MPHI – ISG uses a reporting format that works in conjunction with the Project Plan. This reporting format updates where we are on the project, it reviews what was to be done in the reporting period, and it identifies what will be performed in the next reporting period and who is responsible. It defines any changes that need to be made and it tracks the funding of the project. Also the report includes present issues, outlines changes that need to be done and tracks the budget.

Below is the report that we use presently. If we need to, this report can be modified to meet MDE’s needs. In addition to what you see below we color code the report to highlight area of need. Presently if the project is on schedule there is no color code. If there is a process that need to be monitored it will be in yellow. If we have a high priority task and we need to insure it is completed quickly or the project is in risk it will be in red. Our goal is that there will not be any red rows on the report through the life of the project.

Biweekly Report

Date	Project Progress	Completed Work	Planned Work	Issues	Financials	Change Management	Project Risk

1.4 Project Management

**1.401 Issue Management**

MPHI – ISG takes issue management very serious. We work diligently to keep issues at a minimum. MPHI – ISG has learned over the pasted four years of building courses that are completed on time and within budget that strong planning and issue management are key to our success.

We use a very simple form to identify, assign, manage and track issues. In addition to the documentation we color code the issue to highlight the importance of the issue. At present we use no color for low priority, yellow for medium priority and red for high priority. At the initiation of the project MPHI – ISG will work with the MDE to define how an issue will fall within each category. MPHI – ISG has learned that it is best to work with the customer on defining how issues reside in specific categories since the customer know what is most important to them in the project. Below is an example or MPHI –ISG Issue Log.

## Issues Log

Issue Description	ID Date	Resolution Date	Issue Cause	Resolution Process	Parties Responsible	Resources Assigned	Update Information

Issues will be captured immediately upon identification of an issue. New issues will be immediately emailed to appropriate members of the Project Team. The MPHI – ISG Project Manager and the MDE Project Manager along with other team members if necessary will determine the issue severity. The issue will immediately be logged and a resolution process will be determined. The Issue Log will be reviewed at least at the biweekly reporting sessions. If necessary any the issue log may be reviewed sooner and on a more regular basis dependent upon the severity.

### 1.402 Risk Management

Risks to the Project will be identified on an ongoing basis. The Project Management Document will identify high risk or important activities within the project and these will be monitored closely to ensure that these activities are completed timely. Both the MPHI – ISG Project Manager and the MDE Project Manager will work closely to mitigate any risk situations.

### 1.403 Change Management

MPHI – ISG understands and agrees to the State of Michigan’s change management process.

## 1.5 Acceptance

### 1.501 CRITERIA

MPHI – ISG understands and agrees to MDE’s product acceptance process as outlined in the bid document. MPHI – ISG will develop a test plan in cooperation with MDE once all the modules and subsections are defined.

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

1. Acceptance of deliverables is defined by the MDE Project Manager (or their designated representative). It will include adherence to the agreed-upon development methodology and standards.
2. MDE Project Manager (or their designated representative) will review the overall system design concept for each system module.
3. All documents, software and services of the project are delivered and accepted by MDE Technical Project Manager and DIT Client Service Representative or designated representative in accordance with the requirements of this contract and the accepted Vendor’s proposal. MDE will complete a review of each submitted deliverable within 10 working days from the date of receipt.
4. An overall Test Plan will be developed and approved by the Vendor and approved by the MDE Project Manager (or their designated representative).

A thorough test plan will be determined by the MDE Project Manager, in coordination with the MDE Technical Manager, and executed by the Vendor for each system module to be

5. developed. This thorough testing process will ensure the system product meets business requirements and project standards and operates successfully in the deployment environments.
  - a. Testing methodology will verify that the system works properly, integrates effectively with MiLP, and is understandable to the user.
  - b. The navigation of the system will be checked to confirm that it is straightforward and easy for users to follow.
  - c. The GUI will be checked to ensure the system conforms with State standards on web-based application appearance and function.

- d. Testing shall also assure compliance with SCORM, AICC, and ADA Section 508 standards.
- e. A test plan may include:
  - i. Testing Schedule
  - ii. Testing Materials
  - iii. Test Checklists and Test Script Scenarios
  - iv. Test Data
  - v. Criteria for Passing
  - vi. User Interface Testing
  - vii. Security Testing
  - viii. Configuration Testing
  - ix. Installation Testing
  - x. Integration Testing

## **1.502 FINAL ACCEPTANCE**

MDCH – ISG understands and agrees to the MDE final acceptance criteria.

The following criteria will be used by the State to determine Final Acceptance of the project as described under this SOW.

1. All documents, software and services of the project are delivered and accepted by MDE Technical Project Manager and DIT Client Service Representative or designated representative in accordance with the requirements of this contract and the accepted Vendor's proposal.
2. For ninety (90) days after installation, the software and any related infrastructure meet or exceed DIT's performance and reliability requirements in accordance with the requirements of this contract and the accepted Vendor's proposal. During the 90 day warranty period, the software must meet or exceed the performance and reliability requirements for a period of thirty (30) consecutive days.
3. Approvals will be written and signed by MDE Technical Project Manager with assistance from DIT. Unacceptable issues will be documented and submitted to the Contractor.
4. All issues discovered during the 90 day warranty period are resolved and accepted or waived by MDE and DIT. Approvals will be written and signed by MDE Technical Project Manager with assistance from DIT.
5. All bills related to this contract have been submitted and approved for payment.

### 1.6 Compensation and Payment

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

MDCH – ISG understands and agrees to compensation and payment for work performed on this project.

MDCH – ISG has outlined its cost in Article 1 Attachment A.

Vendor must identify all information related, directly or indirectly, to the Vendor's proposed charges for services and deliverables including, but not limited to, costs, fees, prices, rates, bonuses, discounts, rebates, or the identification of free services, labor or materials.

### 1.7 Additional Terms and Conditions Specific to this SOW

#### **1.701 ADDITIONAL TERMS AND CONDITIONS TO THIS SOW**

MPHI – ISG understands and agrees to the terms and conditions stated in this section.

All of the on-line content will be owned by the State.

### Suspension/Debarment

The approved Vendor shall certify it is neither excluded nor disqualified under the Suspension and Debarment rules found at 7 CFR sec 3017.300. They will certify that they are neither on the Excluded Parties List System (EPLS) found at [www.epls.gov](http://www.epls.gov) nor that they are a disqualified party under these rules.

### Evaluation

The MDE and its approved Vendor agrees to cooperate with any evaluation of the program operations and provide USDA access to all requested data and records.

### Copyright

USDA reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for the Federal Government purposes: (1) the copyright in any work developed under this contract, under any subcontract, or under any agreement under such subcontract; and (2) any rights of copyright to which a vendor or subcontractor purchases ownership with contract funds.

### USDA Acknowledgement

Unless otherwise advised by the FNS, the vendor shall acknowledge the support of USDA/FNS whenever publicizing the work under this Agreement. To this end, the vendor shall include on any publication resulting from the work performed under this Agreement language in substantially the form set out below:

“This project has been funded at least in part with Federal funds from the U.S. Department of Agriculture, Food and Nutrition Service. The content of this publication does not necessarily reflect the views or policies of the Department, nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government.”

### Evaluation Method and Selection

The State uses a best value determination in its IT procurement process. "Best Value" procurement means the selection of a Vendor by determining which proposal offers the best trade-off between price and performance, where quality is considered an integral performance factor.

Vendors must also familiarize themselves with new legislation and directives requiring that State procurements consider preferences for businesses owned by qualified disabled veterans (Public Act 91 of 2005) and for qualified Michigan-based businesses (Executive Directive 2005-6). The information is available at [www.michigan.gov/doingbusiness](http://www.michigan.gov/doingbusiness).

**ARTICLE 1B – EVALUATION INFORMATION**

**REQUIRED VENDOR INFORMATION**

Please provide following required Vendor information.

**1B.100 Vendor Information**

**1B.101 VENDOR NAME AND ADDRESS**

Name, address, principle place of business, and telephone number of legal entity with whom contract is to be written.

Name:	<u>Michigan Public Health Institute – Interactive Solutions Group</u>
Address:	<u>2436 Woodlake Circle Suite 300</u>
City, State, Zip:	<u>Okemos, Michigan 48864</u>
Phone:	<u>(517 ) 324-8300</u>
Web Page:	<u><a href="http://www.mphi.org">www.mphi.org</a></u>

**1B.102 LOCATION ADDRESS**

Address:	<u>2501 Jolly Road Suite 180</u>
City, State, Zip:	<u>Okemos, Michigan 48864</u>

**1B.103 ORGANIZATION AND YEAR**

Legal status and business structure (corporation, partnership, sole proprietorship, etc.) of the Vendor and the year entity was established.

**Organization:** The Michigan Public Health Institute (MPHI) is a Michigan non-profit 501(c) (3) Corporation authorized under Public Act 264 of 1989 as a cooperative venture of the State of Michigan Department of Community Health, University of Michigan, Michigan State University and Wayne State University, to plan, promote and coordinate all facets of health care services. Interactive Solutions Group is an integral division of MPHI and is fully responsible for all electronic learning services for MPHI.

A unique resource of MPHI is our professional staff who have extensive experience in community-based work. MPHI has credibility with communities, and often serves as an intermediary between government agencies and the community.

With close ties to government, and health-care provider communities, MPHI takes full advantage of the depth and diversity of Michigan's entire health research and delivery community. As a result, it often tackles projects of a scope that would be difficult for any of its member institutions to attempt on an individual basis.

History: Authorized by the Michigan Legislature under Public Act 264 of 1989, MPHI was founded in 1990 by Michigan State University, the University of Michigan, Wayne State University, and the Michigan Department of Community Health. MPHI is governed by a board of 12 directors, representing government, the partner universities, foundations, and others.

**Sales Volume:** Over the past 15 years, MPHI has grown steadily, and in 2004 had approximately 175 projects under management by its 240 employees, generating over \$32 million in annual income, from approximately 40 different funding sources.

## Financial Resources

### Financial Input Data

2004

Revenue	\$29,859,009
Gross Profit	\$3,420,158
SG & A (DA)	\$3,220,158
Operating Income (Loss) (EBITDA)	\$200,000
Earnings Before Interest & Taxes (EBIT)	\$200,000
Net Income (Loss)	\$200,000
Cash and Short Term Securities	\$4,003,747
Short Term Deferred Revenue (DR)	\$1,200,975
Accounts Receivable (AR)	\$1,806,011
Current Assets (CA)	\$6,598,465
Total Assets (TA)	\$7,242,558
Current Liabilities (CL)	\$5,135,858
Total Liabilities (TL)	\$5,135,858
Retained Earnings (RE)	n/a
Net Worth (NW) Owners/Shareholders Equity	\$2,106,699
Cash Flows	\$323,430

### Company Sales Volumes for the Last Five (5) Years

Financial Input Data	2004	2003	2002	2001	2000
Revenue	\$31,438,281	\$33,149,467	\$31,126,897	\$25,459,227	\$20,631,089

The actual work on this contract will be located at the Okemos, Michigan address. On the Okemos Campus MPHI has four buildings and a staff of over 240 employees of which the Interactive Solutions Group is a part. The Interactive Solutions Group has a total of 15 employees of which up one employee will be involved in this project at any given time.

### 1B.104 VENDOR'S CONTACT

Name, title, address, email, phone and fax numbers for Vendor's Contact.

<b>Name:</b>	<u>Larry Doele, Executive Account Manager</u>
<b>Address:</b>	<u>2501 Jolly Road Suite 180</u>
<b>City, State, Zip</b>	<u>Okemos, Michigan 48864</u>
<b>Phone:</b>	<u>(517) 324-6044</u>
<b>Fax:</b>	<u>(517) 324-8370</u>
<b>E-Mail</b>	<u><a href="mailto:ldoele@mphi.org">ldoele@mphi.org</a></u>

Note: Person named above will be sole contact for your company to receive the Contract. Include the name and telephone number of person(s) in your company authorized to expedite any proposed contract with the State.

### 1B.200 Qualifications

### 1B.201 PRIOR EXPERIENCE

Over the past 15 years, Michigan Public Health Institute has gained extensive experience in public health projects. A majority of these projects include extensive training aspects within these projects. To assist in training opportunities, MPHI developed a state-of-the-art Interactive Meeting Space in 2003. The Interactive Meeting Space includes Video Conferencing, Satellite Downlinking and Audio Conferencing. The Interactive

Meeting Space has hosted multiple organizations, both State and public, for both small and large training activities.

In fiscal year 2005, MPHI added E-Learning to its training portfolio. When Michigan Virtual University made a strategic decision to concentrate on E-Learning for high school students and eliminate all other E-Learning projects, MPHI acquired MVU's healthcare business. Larry Doele who managed all of MVU's online healthcare business also joined MPHI – ISG to insure a smooth transition of all the online business. Larry Doele not only provided the account management for the online courses he also performed all the project management in the building and development of sixteen (16) healthcare courses. All of which were delivered to the customer on time and within budget.

When the transition was made these 14 healthcare courses came to MPHI – ISG. These courses were separated by the subject matters concerning Medicaid, Breast and Cervical Cancer and Children's Health. Since that time, MPHI – ISG has built two additional courses which have been added to the curriculum library.

In addition the MPHI - ISG has added a Learning Management System (LMS) to be the electronic backbone of all learning and training. The LMS houses the entire curriculum and is how over 4000 registered students have taken over 14,000 individual courses in 2005. These 4000 plus students on completion of their courses have given over a 93% satisfaction rating on their course and the subject taught within the course as rated through customer surveys attached to the courses.

Below is an indication of our prior work experience in large and complicate projects in E-Learning:

## Web Based Online Training

<b>Client Organization Name and Address:</b>	Michigan Department of Community Health (MDCH) – Medical Services Administration, David McLaury PO Box 30479 Lansing, MI 48909-7979
<b>Role:</b>	Prime

MPHI – ISG is also partnering with HTC to build all the online and instructor-led training for the Michigan State E-Grant project. This project is scheduled to begin in late January 2006.

### Contract Requirements and Project Description:

#### *Project Work Performed*

The project purpose was to register learners, manage 14 online courses and update the courses as needed for MDCH. It was also provided monies for building any online courses that were needed for the existing customers. This was a continuation for the fourth year of this project. The project started with the building of two Medicaid courses and grew from there to eight Medicaid courses, four Breast and Cervical Cancer courses and two Children’s Health courses. On average we have at least 4200 registered students per year. The 4000 plus students on average take over 10,000 courses per year over the past four years. Annually we have updated each course and built at least three additional courses from 2001. We have added satisfaction surveys to most of the course to measure student satisfaction and to track demographic information for our clients

#### *Where We Are*

All work has been completed on schedule and within budget for all activities over the past four years. We also move the contract from Michigan Virtual University to Michigan Public Health Institute due to the fact that MVU was getting out of the Healthcare Online Course business. Over the past four years, customer satisfaction has averaged 92% on areas of the course meeting the defined course objectives. Our students also stated that 94% of them would recommend the course they had just finished to a friend.

#### *Lessons Learned*

Course Development is dependent on the Subject Matter Experts having the time and willingness to give the effort to get the course done in a timely manner. It is also important that prior to building the course you have the information concerning the end user’s electronic situation so you do not overbuild the course for the intended individual.

#### *Benefits to the Client*

The MDCH client was able to train over 20,000 individuals over the past four years on Medicaid, Breast and Cervical Cancer, and Children’s Health. This has not only saved an immense number of dollars for the State of Michigan in providing the training, it has also saved time, money and productivity to the state employees, providers, nurses and other individuals who have taken the courses. In addition, the courses have improved quality of billing on the HCFA 1500 and UB 92, the data quality for the MBCIS reporting system and they have assisted in improving the data quality for the MCIR reporting system. The satisfaction surveys show that overall the individual learners are highly satisfied with online learning and are requesting additional courses online.

### References:

Mr.  
David  
McLaury

Mr.  
Jim Beaver

MD  
CH

MD  
CH

PO  
Box 30479

Olin  
West  
Building

Lans  
ing,  
Michigan

<b>Original Cost/Final Cost of Development Effort:</b>	\$1049,000.00/1,049,000.00
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### Explanation of Difference in Budgets:

A four year continuation of the original contract

<b>Signed and Actual Start/End Dates for Development Effort:</b>	Signed: 10/01/01 Actual: 10/01/02-Present
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### Explanation of Difference in Schedule:

## Web Based Online Training

<b>Client Organization Name and Address:</b>	Michigan Department of Community Health (MDCH) – Women, Children and Infants Program Debra Darling Institute of Healthcare Studies Fee Hall MSU East Lansing, Michigan
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3423 Martin Luther King Blvd  
(517) 241-7135  
Lansing, Michigan  
(517) 335-8630

Mr. Robin Roberts  
MDCH  
Olin West Building  
3423 Martin Luther King Blvd  
Lansing, Michigan  
(517) 335-1178

Ms. Debra Darling  
Institute for Healthcare Studies  
D132 West Fee Hall  
East Lansing, Michigan  
(517) 432-9822

## 1B.202 STAFFING

Larry Doele has project managed all the online courses built over the past four years while working for Michigan Virtual University, and currently for MPHI – ISG. He has had full responsibility for course builds, development and customer service for the entire curriculum available to all our existing clients

### Resume:

**Project Role:** Executive Account Manager/Project Manager

**Name:** Larry Doele

### Certifications:

**Education:** Bachelor of Science, Central University of Iowa, 1970  
MA Vocational Rehabilitation Education, University of Iowa, 1972

### Experience:

Larry has over 32 years of experience in vocational education, operational management, product development and sales. In the most recent years Larry has been a consultant and Project Manager of Online Learning. He has lead teams in building a number of online courses for state government in the healthcare arena. Larry has extensive experience in managing large groups of individuals in meeting specific goals and tasks. He has managed many cross-functional teams bringing in large multi-faceted projects to completion on time and within budget. He also has extensive experience in customer satisfaction and account management leading to additional customer business and high customer quality ratings.

### Chronological Work Experience:

**Michigan Public Health Institute** **Sept 2004 to Present**  
**Account Executive**

Responsible for all online learning activities for MPHI

- Manage the 14 online learning courses
- Update all courses on an annual basis
- Project Manage all new online learning courses

**Michigan Virtual University** **Jan 2002 to Dec 2004**  
**Account Manager Healthcare Training Network**

Responsible account development, management and growth of the Healthcare Training Network through identifying, obtaining and building healthcare content, growing the customer base and increasing customer satisfaction for all existing customers.

- Increases sales from \$200K to over \$700K while maintaining a sales pipeline of over one million dollars
- Increased customer satisfaction to over 90% as defined through customer satisfaction surveys
- Defined and implemented the Healthcare Account Management Strategy

- Increased student usage of the Healthcare Courses by over 250%
- Managed Managed all Healthcare Course Builds within budget and on schedule

**MEDecision** **July 1999 to Dec 2001** ***Director of Account Management***

Responsible for 18 installed customers nationally, insuring customer technical support satisfaction on a daily basis and long term customer satisfaction by strategically upgrading the customers with the latest versions and by getting them to add new products to enhance their competitiveness in their marketplaces.

- Successfully developed and nurtured eight reference accounts to assist sales.
- Assisted in the development and sale of the Internet based utilization product.
- Strategically assisted customers in the decision to upgrade to new software versions and add additional products, which led to, increased productivity and enhanced customer outcomes within their existing and growing marketplaces.
- Developed an account management system, which improved the existing customer satisfaction and insured that all internal departments provided consistent customer service

**Intracorp** **July 1980 to Jan 1999** ***Senior Vice President Field Case Management***

Responsible for the Field Case Management Business Unit with revenues of \$113 million, over 1200 employees and offices throughout the U.S. and Canada with emphasis on strategic direction, product development and management, sales and operation and the integration of all other Business Units using the international network of Field Case Management Specialists.

- Delivered double-digit revenue growth per year going from \$92 million to \$113 million on a previously declining business.
- Increased earnings 76%.
- Developed and implemented diversity products to serve Hispanics and Native Americans leading to additional business opportunities in California, New Mexico, Florida and Puerto Rico of \$4 million.
- Initiated a state-by-state market revenue opportunity analysis by product to assist sales staffing deployment.
- Upgraded the total organizations electronic communication system to a full capacity intra/internet capability system.
- Designed and implemented a specialist scorecard using the data warehouse capabilities to track outcomes and efficiency.
- Instituted core competency profiles for all management and specialist positions building a stronger focused staff.

***Vice President Product Development***

Responsible for the market analysis, product development, sales and marketing of all products for the international Field Case Management Business Unit, including new product launches, enhancement of existing products and harvesting non-profitable products.

- Designed and implemented medical and vocational niche products, which have generated more than \$15 million since 1994.
- Developed a product opportunity matrix based on state-by-state insurance legislation to assist sales and operations in identifying growth opportunities.

- Attained an annual double-digit sales increase since 1995.
- Implemented a national account management program, which increased customer retention by 50% and generated an additional \$5 million revenue due to penetration.
- Standardized the sales process and presentation format for new products, which increased closure rate by 60%.
- Built a national claims adjuster mailing database and implemented a systematic mailing program.
- Developed the curriculum and implemented Growth University for all Field Case Management managers, setting the stage for explosive growth in 1996-1997.

### ***Vice President Eastern Region***

Responsible for all products within sixteen states in the eastern third of the U. S. including the sales and operations for field case management and all provider auditing services.

- Implemented the first fully integrated Early Assessment customer.
- Turned around three area offices from a negative growth and earnings position to one, which was positive.
- Developed and implemented local sales and service program, which led to a double-digit sales increase.

### ***Director of Eastern Service Center***

Responsible for Intracorp's largest Group Health preadmission and continued stay service center, handling over 100,000 admissions per year for major customers such as General Electric, IBM, CIGNA, the State of New York and the City of New York, and managing a staff of 280 nurses and 40 physicians.

- Increased the earnings one and a quarter fold from 1988-1990.
- Introduced a Continuous Quality Improvement Program to the Group Health Business Unit.
- Implemented a \$1 million dollar customer, without adding one headcount, through process improvement.
- Developed a Utilization Review Product for a DRG client, which produced a ROI of 10 to 1.

### **Manager Michigan and Indiana**

Responsible for all Operations and Sales in both states, doubling the business.

### **Manager Grand Rapids Office**

Opened the first office in Grand Rapids and increased the business three fold.

### **Field Case Management Specialist**

Responsible for a caseload of 28-32 injured individuals coordinating their medical treatment and assisting them as they returned to work.

### **Joseph P Kennedy School for Exceptional Children**

**June 1975 to June 1980**

Directed and managed the sheltered workshop for 200 clients who were mentally retarded or emotionally disabled.

### **Elkhart Rehabilitation Center**

**Feb 1972 to May 1975**

Directed an experimental grant to assist disabled welfare recipients in returning to employment.

**Subcontractor:**

MPHI – ISG will be working with RWD Technologies as a subcontractor to assist in the building of the MDE School Meals Training. RWD Technologies has worked hand in hand in building the existing online course curriculum for MPHI – ISG. RWD has worked with Larry Doele both at MVU and now at MPHI – ISG and together they have met every project deadline on time and have finished each course within budget.

RWD Technologies  
Herman McGowan  
5440 Corporate Drive  
Suite 400  
Troy, Michigan 48098  
(248) 267-3541

RWD Technologies® is a leading provider of integrated services to companies in complex operating and high-technology environments. RWD’s objective is simple: to provide users of technology with the tools they need to make them more effective at their jobs and increase the productivity and profitability of their company. RWD understands job-specific performance needs and deliver the systems, training, and support tools that help maximum the return on your technology investment.

For over 12 years, RWD has been creating a variety of engaging and effective learning content, from stand-up instruction to embedded performance support, and most recently eLearning. RWD has capabilities in all of these instructional areas along with many areas that support these items, such as Information Technology and advanced Internet technologies. All of these capabilities are embedded in our philosophy to improve a worker’s time to competence and enhance their overall job performance.

Founded in 1988, RWD’s business spans four key service areas: information technology, enterprise software implementation, technology performance support, and lean manufacturing consulting. Over 1,000 highly skilled and motivated employees deliver our services to leading corporations worldwide. RWD has integrated business solutions consistently yield productivity improvement, positive cultural change, and profitability growth.

**Subcontractor Resumes:**

**Herman McGowan Senior Instructional Designer**

**Education** M.Ed., Instructional Technology, Wayne State University  
B.A., History, University of California, Los Angeles

**Experience** **RWD Technologies**  
**2001 - Present** As an instructional designer, Mr. McGowan, provides instructional design and adult learning expertise to eLearning and classroom-based instruction projects. His primary responsibilities include communicating with the client and subject matter experts, implementing job/process analyses, developing design documents and storyboards, developing interactive exercises and tests, and instruction design consulting on eLearning projects. His representative projects include:

- Michigan Public Health Institute—Mr. McGowan worked as the lead instructional designer on multiple eLearning projects:

- Michigan Childhood Immunization Registry
- Uniform Billing
- What is Medicaid
- Breast and Cervical Cancer Program Information system

He acted as project manager/instructional designer for the following Michigan Public Health Institute projects:

- Children Special Health Care Services
- Breast and Cervical Cancer Program – Breast Clinician
- Breast and Cervical Cancer Program – Cervical Clinician
- Breast and Cervical Cancer Program – Coordinator
- General Motors University—Mr. McGowan worked as lead instructional designer on a project where he designed a Web-based training course for a new software tool used by GM’s Model Option Forecasting unit.
- Delphi—Mr. McGowan was an instructional designer and assistant developer for the Delphi IV: A Passion for Excellence, computer-based training course. He was later utilized as a consultant on moving the course from CD-ROM to Delphi’s intranet at the client’s request. Mr. McGowan also served as a facilitator for the Delphi Problem Solving Process instructor-led training course.
- Archway Marketing Services—Mr. McGowan developed operating and training manuals for a new warehouse tracking system.

**1996 - 2000**

**Allstate Insurance Company**

Mr. McGowan was an Expense Unit Manger for Allstate’s North Central Regional office, for two years. He supervised a staff of seven, managing the payment of all invoices, expense reimbursements, and mailroom operations for Michigan, Indiana, and Ohio. Before assuming the management position, Mr. McGowan worked as an Underwriting Specialist. In this position, he advised the sales staff on current company policy, state regulations, and marketing information on auto and home insurance.

**Tony Spern Senior Multimedia Specialist**

**Education**

B.S., Horticulture, Michigan State University

**Experience  
1998 - Present**

**RWD Technologies**

Mr. Spern is a member of the New Media Design department. He has assisted project managers in planning and executing the creation of documentation, eLearning courseware, website design, and multimedia projects for both internal and external clients. He works very closely with clients ensuring that all web-based projects meet the technical requirements and specifications for client systems.

- DaimlerChrysler – Mr. Spern has been the primary designer/integrator for several eLearning projects including eFinance and PF-Safety as well as a core team member for Die Setter and Powertools. He was also the lead designer/integrator for the Advanced Technical Training (ATT) intranet website.
- General Motors – As the design lead on the ForeCost eLearning course for GMU Finance College, Mr. Spern was the primary designer/integrator.

- Delphi – Mr. Spern was the lead designer/integrator for several eLearning projects that included MSD, policy training for Expense Reporting, Delphi Product Security, and CMII Overview. He was also responsible for the creation of 3D content and animations in Delphi IV-A Passion for Excellence course, and was the lead designer/integrator for Delphi V-Excellence in Action course.
- Michigan Virtual University (MVU) – As part of a team, Mr Spern has been the graphic designer and integrator for several MVU eLearning courses including What is Medicaid, HIPAA, and the Michigan Breast and Cervical Cancer Control Information System.

**1987 - 1998**

**Rain Forest, Inc., Warren, MI**

Mr. Spern served as general operations manager. In this capacity, he was responsible for the smooth operations of all business systems relating to the scheduling, purchasing, customer service, management of 15-20 employees, continuous improvement, computer systems and network, and publications.

Mr. Spern gained significant on-the-job training in database development and desktop publishing through the management of this small business.

**1981 - 1987**

**Skyway Greenery, Colorado Springs, CO**

Mr. Spern was the greenhouse manager, responsible for the maintenance of live foliage, flowering plants, and related environment equipment.

**Jon Newburg Editor**

**Education**

B.A., Journalism, Michigan State University

Double-cognate in psychology and sociology.

**Licenses and Certifications**

Completed New Horizons CorelDraw Level 1 Certification

Completed "Increasing Personal Effectiveness" training (EDS)

Completed Michigan Product Knowledge Certification Program Tier-1

**Language Proficiency**

English

**Experience 2004 - Present**

**RWD Technologies**

Perform editing, testing, and all aspects of quality control for client deliverables. Maintain quality standards for eLearning courses, manuals, presentations, proposals, and marketing materials. Provide editorial assistance to all departments as needed.

**2004 - 2004**

**NIH Perinatology Research Branch**

Bioinformatics Data Capture Clerk

Analyze medical charts to capture data relevant to research study. Ensure quality in data capture. Edit medical journal article submissions. Assist with job tracking. Scan, copy, and enter data using various databases.

**2001 - 2003**                    **Society of Manufacturing Engineers**  
Production Editor

Edit technical book manuscripts about subjects such as lean manufacturing, die maintenance, deburring, and design. Create architecture and test CD-ROM products using Adobe Acrobat. Assist graphic designer using Photoshop and other graphics programs. Write reports analyzing future business opportunities for Publications Manager. Work as a member of the production and reference publications team. Provide assistance to all areas of organization as needed.

**2000 - 2001**                    **Meridian Advertising**  
Copywriter

Write and edit copy for various print advertisements. Provide input at creative reviews. Ensure accuracy for clients. Work with artists in a team environment.

**1B. 203 PAST PERFORMANCE**

MPHI – ISG online learning has had a continuation grant with the Department of Community Health for their online courses as listed above in section 1B.201 Prior Experience. In addition we have the WIC contract through the Institute for Healthcare Studies and the Department of Community Health, which is also listed above in section 1B.201 Prior Experience. Both contracts are listed within our Master Agreement with MDCH. Below is a list of state contracts for the past 10 years:

**2005**

Michigan Department of Community Health Master Agreement #10 - \$24,303,196.00

Michigan Department of Education

    G-34009 Adolescent Sexuality Collaboration - \$54,182.00

    G-34010 Adolescent Sexuality Collaboration - \$55,922.00

Michigan Department of Environmental Quality

    U-12303 Michigan Source Water Protection – Year 3 – \$64,369.00

Family Independence Agency

    G-27051 Child Death Review - \$462,499.00

Office of Highway Safety Planning

    15024 Technical Assistance to OHSP - \$364,518.00

**2004**

Michigan Department of Community Health Master Agreement #10 - \$21,010,096.00

Michigan Department of Education

    G-34009 Adolescent Sexuality Collaboration - \$54,182.00

Michigan Department of Environmental Quality

    U-12302 Michigan Source Water Protection – Year 2 – \$44,372.00

Family Independence Agency

    G-27051 Child Death Review - \$225,000.00

Office of Highway Safety Planning

    15024 Technical Assistance to OHSP - \$364,518.00

## 2003

Michigan Department of Community Health Master Agreement #9 - \$22,290,424.00  
Department of Management & Budget  
    N-25002 HIPAA Consulting & Technical Services - \$7,116,365.00  
Family Independence Agency  
    G-27049 Child Death Review - \$260,437  
    G-27050 juvenile Delinquency Prevention Program Evaluation - \$225,000.00  
Office of Highway Safety Planning  
    15023 Technical Assistance to OHSP - \$554,715.00

## 2002

Michigan Department of Community Health Master Agreement #8 - \$19,713,076.00  
Children's Trust Fund  
    G-12801 Young Fathers Support Groups – Year 3 - \$22,588.00  
Department of Education  
    G-34007 Broadening the Circle - \$20,830.00  
Department of Environmental Quality  
    U-12300 Michigan Source Water Assessment - \$103,361.00  
    U-12301 Private Drinking Well Testing - \$176,957.00  
Department of Management & Budget  
    J-25000 HIPAA Consulting & Technical Services - \$4,230,000.00  
    J-25000 HIPAA Consulting & Technical Services - \$10,433,488.00  
Family Independence Agency  
    C-27046 Juvenile Justice Grant Unit Tech Assistance - \$299,963.00  
    C-27047 Juvenile Death Review - \$475,323.00  
    C-27048 Supplemental Training Funds to 27047 - \$475,000.00  
Department of Consumer and Industry Services  
    E-42005 Medical Facility Inspection Services - \$3,663,981.00  
Office of Highway Safety Planning  
    15021 Technical Assistance to OHSP-LEL - \$679,780.00  
    15021 Technical Assistance to OHSP-NON-LEL – \$331,853.00

## 2001

Michigan Department of Community Health Master Agreement #7 - \$20,458,840.00  
Children's Trust Fund  
    G-12801 Young Fathers Support Groups – Year 2 - \$33,881.00  
Family Independence Agency  
    G-27042 Child Death – 6 Mo extension - \$328,017.00  
    G-27043 Child Death Review – \$114,446.00  
    G-27044 Child Death Review – \$449,997.00  
    M-27045 Juvenile Justice Grants Unit Tech Assistance - \$299,963.00  
Office of Highway Safety Planning  
    15020 Technical Assistance to OHSP – \$791,510.00

## 2000

Michigan Department of Community Health Master Agreement #6 - \$18,950,599.00  
Children's Trust Fund

G-12800 Young Fathers Support Groups – \$45,175.00

Department of Education

34005 Infant & Toddler - \$128,577.00

34006 Infant & Toddler FY00-01 – \$1,307,061.00

Family Independence Agency

H-27039 Juvenile Delinquency Prevention Evaluation – \$256,632.00

27040 AFH Closure – \$4,000.00

H-27041 Juvenile Delinquency Prevention Evaluation – \$399,017.00

Michigan Department of Consumer and Industry Services

42003 Critical Assess Hospital Surveys Pt 1 – \$48,909.00

E-42004 Critical Assess Hospital Surveys Pt 1 – \$407,834.00

Office of Highway Safety Planning

15018 Technical Assistance to OHSP - \$6,547.00

15019 Technical Assistance to OHSP - \$341,412.00

## 1999

Michigan Department of Community Health Master Agreement #5 - \$13,427,079.00

Department of Education

34004 Infant and Toddler -\$1,100,000.00

Family Independence Agency

27010 Juvenile Delinquency prevention evaluation 99/00 – \$117,728.00

G-27038 Child Death 99/00 – \$524,977.00

Michigan Department of Consumer and Industry Services

42002 Critical Access to Care Survey - \$20,722.00

Office of Highway Safety Planning

15017 Technical Assistance to OHSP FY 99/00 - \$210,364.00

## 1998

Michigan Department of Community Health Master Agreement #4 - \$14,540,124.00

Department of Education

34002 Infant and Toddler (mid-cycle funds) -\$501,927.00

34003 Infant and Toddler Intervention – \$1,175,000.00

Family Independence Agency

27009 Juvenile Delinquency prevention evaluation 98/99 – \$313,249.00

G-27038 Child Death Review - \$500,000.00

Michigan Department of Consumer and Industry Services

42001 Critical Access to Care Survey -\$75,019.00

Michigan Developmental Disabilities Council

95000 Program Consultation and Review for the MDDC Project - \$50,000.00

Office of Highway Safety Planning

15014 Michigan Truck Safety Project - \$15,450.00

15015 Michigan Truck Safety Commission - \$37,205.00

15016 Technical Assistance to OHSP FY 98/99 - \$195,380.00

Office of Services to the Aging

48003 Older Women's Health Forums - \$12,060.00  
48pp4 Evaluation-Senior Services Corps - \$5,000.00

## 1997

Michigan Department of Community Health Master Agreement #3 - \$11,514,647.00  
Department of Education  
    34001 Infant and Toddler Early Intervention System - \$675,830.00  
Family Independence Agency  
    27006 Juvenile Delinquency Prevention Evaluation 97/98 - \$276,630.00  
Office of Drug Control Policy  
    29002 Evaluation Technical Assistance and Evaluation - \$19,916.00  
Office of highway Safety Planning  
    15012 Michigan Alcohol Countermeasures Grant - \$87,453.00  
    15013 Assessing community Traffic Safety - \$72,450.00  
Office of Services to the Aging  
    48002 Kinship Care - \$5,000.00

## 1996

Michigan Department of Community Health Master Agreement #2 - \$8,582,934.00  
Department of Education  
    34000 Infant and Toddler Early Intervention System - \$950,000.00  
Department of Transportation  
    35000 Train Crossing Safety - \$60,000.00  
Family Independence Agency  
    27001 Juvenile Delinquency Prevention Evaluation - \$108,114.00  
    27002 Consumer Satisfaction - \$4,950.00  
    27003 Systems Reform and Evaluation - \$4,900.00  
    27004 Strong Families/Safe Children Evaluation - \$39,000.00  
    27005 Juvenile Delinquency Prevention Evaluation - \$212,484.00  
MDCH Medicaid Technical Assistance  
    33000 Medical Service Admin/Managed Care Technical Assist. - \$1,070,558.00  
Office of Drug Control Policy  
    29000 Evaluation Training - \$337,212.00  
    29001 Evaluation technical Assistance - \$282,513.00  
Office of Highway Safety Planning  
    15005 Assessing Community Traffic Safety - \$77,550.00  
    15006 Alcohol Issues Forum 96/97 - \$127,016.00  
    15007 Technical Assistance 96/97 - \$230,000.00  
    15008 Engineering Training Evaluation - \$50,149.00  
    15009 Zip Zero Zilch - \$154,984.00  
    15010 Michigan Alcohol Assessment - \$26,147.00  
    15011 Assessing Community Traffic Safety - \$108,570.00  
Office of Services to the Aging  
    48000 Kinship Care - \$5,000.00  
    48001 Senior Volunteer Evaluation - \$120,000.00

## 1B. 204 CONTRACT PERFORMANCE

MPHI – ISG has not terminated or defaulted on any contract in the past 10 years.

### 1B.300 Disclosures

## 1B. 301 DISCLOSURE OF LITIGATION

There is no criminal litigation, investigations, or proceedings involving MPHI – ISG or its subcontractor RWD Technologies at the present time.

## 1B. 302 DISCLOSURE OF RFP ASSISTANCE

MPHI – ISG or its subcontractor did not have any involvement in the RFP draft.

## 1B. 303 Reserved – MIDEAL – EXTENDED PURCHASING

Attached is the checked and sign copy for MiDeal.

## NON-STATE AGENCY REQUIREMENTS

### RESERVED

The prices listed below on Attachment A are good through June 2006.

**Table 1: Summary of the Project Cost**

Bidder – Fill in cost for each item below – if an item does not apply to this project put N/A in Cost (\$) column

No.	Cost Categories	Cost (\$)	% of total cost	Comments
A.	Web-Based Training Course Applications Development	\$135,000.00	100%	
B.	Interfaces	N/A		
C.	Software Tool Licenses	N/A		
D.	Training and Documentation	N/A		
E.	Sever Hardware	N/A		
F.	Severs Software Licenses	N/A		
G.	Project Implementation	N/A		
H.	Connectivity (network solution)	N/A		
I	One year warranty cost	N/A		
	<b>Total Project Cost</b>	<b>\$135,000.00</b>	<b>100%</b>	

**Table 2: Five Years Recurring Cost: Updates, Maintenance and Support**

No.	Cost Categories	Cost (\$)	Comments
J	Application software update cost Updates each year		
	1. First year	\$11,000.00	
	2. Second year	\$8,000.00	
	3. Third year	\$8,000.00	
	4. Forth year	\$6,000.00	

<b>K</b>	<b>Maintenance and Support Cost</b>		
	1. First year	\$16,900.00	
	2. Second year	\$12,400.00	
	3. Third year	\$12,400.00	
	4. Fourth year	\$10,300.00	
	<b>Total Recurring Cost</b>	<b>\$85,000.00</b>	

**Table 3: Total 5 Year System Cost**

<b>No.</b>	<b>Cost Categories</b>	<b>Cost (\$)</b>	<b>Comments</b>
<b>Table 1</b>	<b>Total project (One Time) Cost</b>	<b>\$135,000.00</b>	
<b>Table 2</b>	<b>Total Reoccurring Cost</b>	<b>\$85,000.00</b>	
	<b>Total 5 Years System Cost</b>	<b>\$220,000 .00</b>	

**Cost Breakdown Tables**

**Table 4: Breakdown of Application Development Cost**

<b>No.</b>	<b>Application Development</b>	<b>Total # of resources</b>	<b>Total # of hours</b>	<b>Unit cost (\$)</b>	<b>Total Cost (\$)</b>
<b>A.</b>	1. Project management	1	501	\$70.00	\$35,070.00
	2. Business Analysis			N/A	
	3. System Analysis			N/A	
	4. Programmer/developer			N/A	
	5. System administrator			N/A	
	6. Database administrator			N/A	
	7. Q/A Manager			N/A	
	8. Security specialist			N/A	
	9. Tester			N/A	
	10. Technical writer/ Instructional Designer	1	668	\$86.10	\$57,514.80
	11. CM specialist			N/A	
	12. System Architects			N/A	
	13. Network engineer			N/A	
	14. Software Architects			N/A	
	15. CM specialist			N/A	
	16. Project assistants			N/A	
	17. Web developer			N/A	
	18. Applications Trainer			N/A	
	<b>Others: (Listed below)</b>			N/A	
	19. Multimedia Specialist	1	440	\$86.10	\$37,884.00
	20. Editor	1	80	\$56.73	\$4,538.40
	21.				
	22.				
	<b>Total Cost of Customization</b>			<b>\$</b>	<b>\$135,000.00</b>

**Table 5 Breakdown of Interface Cost**

<b>No.</b>	<b>Interfaces</b>	<b>Cost (\$)</b>	<b>Comments</b>
<b>B.</b>	1.	N/A	
	2.	N/A	
	3.	N/A	
	4.	N/A	
	5.	N/A	
	6.	N/A	
	7.	N/A	
	8.	N/A	

	9.	N/A	
	<b>Total Cost of Interfaces</b>	\$	

**Table 6: Breakdown of Software Tools Cost**

No.	Software Tools licenses cost	Cost (\$)	Comments
<b>C.</b>	1. Report writers	N/A	
	2. Requirement analysis tools	N/A	
	3. Design tools	N/A	
	4. Drawing tools	N/A	
	5. Development environment tools	N/A	
	6. Testing Tools	N/A	
	(a)		
	(b)		
	(c)		
	7. Other systems	N/A	
	Any other software (list)	N/A	
	8.		
	9.		
	<b>Total Cost of Software Tools</b>	\$	

**Table 7: Breakdown of Training and Documentation Cost**

No.	Training cost and Documentation	Cost (\$)	Comments
<b>D.</b>	1. User training	N/A	
	2. User training documentation	N/A	
	3. Operational management training	N/A	
	4. Operational management training documentation	N/A	
	5. DBA training	N/A	
	6. DBA training documentation	N/A	
	Other	N/A	
	7.		
	8.		
	<b>Total Cost of Training and Documentation</b>	\$	

**Table 8: Breakdown of Servers Hardware Cost**

No.	Servers hardware cost	Cost (\$)	Comments
<b>E.</b>	1. Server Hardware – Operating System	N/A	
	2. Server Hardware – DBMS	N/A	
	3. Server Hardware – Print	N/A	
	4. Server Hardware – Security	N/A	
	5. Server Hardware – Other	N/A	
	6. Server Hardware – Backup	N/A	
	7. Servers – Fire walls	N/A	
	8. – Server Hardware installation, configuration, and testing	N/A	
	Other Hardware (list separately)	N/A	

	9.		
	10.		
	<b>Total Cost of Server Hardware</b>	\$	

**Table 9: Breakdown of Servers Software Licenses Cost**

No.	Server Software Cost	Cost (\$)	Comments
<b>F.</b>	1. Server software – Operating system	N/A	
	2. Server software - DMBS	N/A	
	3. Server software – Print	N/A	
	4. Server software – Security	N/A	
	5. Server software – Others	N/A	
	6. Server software – Backup	N/A	
	7. Servers – Fire walls	N/A	
	8. Server software installation, configuration, and testing	N/A	
	9. Load balancing software	N/A	
	Other software	N/A	
	10.		
	11		
	<b>Total Cost of Server Software Licenses</b>	\$	

**Table 10: Project Implementation Cost**

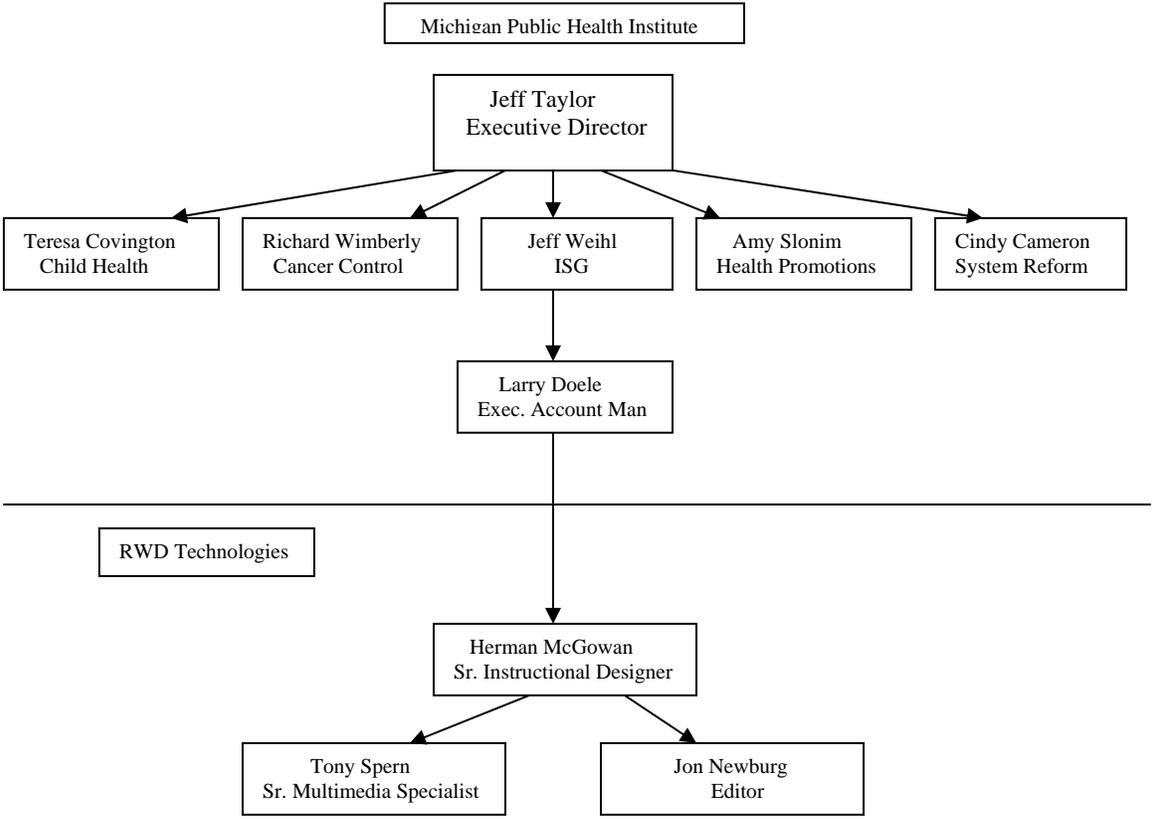
No.	Resources Required	Total # of resources	Total # of Hours	Unit cost (\$)	Total cost (\$)
<b>G.</b>	1 Project Management		N/A		
	2. Integration		N/A		
	3. Testing Unit System Integration Performance Load and stress Parallel testing UAT Other		N/A		
	4. Deployment		N/A		
	Other – List		N/A		
	5.				
	6.				
	<b>Total cost Project Implementation</b>			\$	\$

**Table 11: Five Years Recurring Cost: Hosting the Five Modules**

No.	Cost Categories	Cost (\$)	Comments
<b>K.</b>	<b>Hosting the five Modules</b> An annual cost per year		The hosting cost of the five modules includes both hosting and Help Desk Services on a per year basis.
	1. First year	\$21,000.00	
	2. Second year	\$18,000.00	

3. Third year	\$15,000.00	
4. Forth year	\$12,000.00	
<b>Total Cost for five years</b>	<b>\$66,000.00</b>	

**Article 1 Attachment B**  
Organizational Chart, including Key Personnel



**Article 1, Attachment C**  
Labor Rates

**MPHI – ISG**

Larry Doele – Project Manager - \$70.00/hour

**RWD Technologies**

Herman McGowan – Sr. Instructional Designer – \$86.10/hour

Tony Sperrn – Sr. Multimedia Specialist - \$86.10/hour

Jon Newburg – Editor - \$56.73/hour

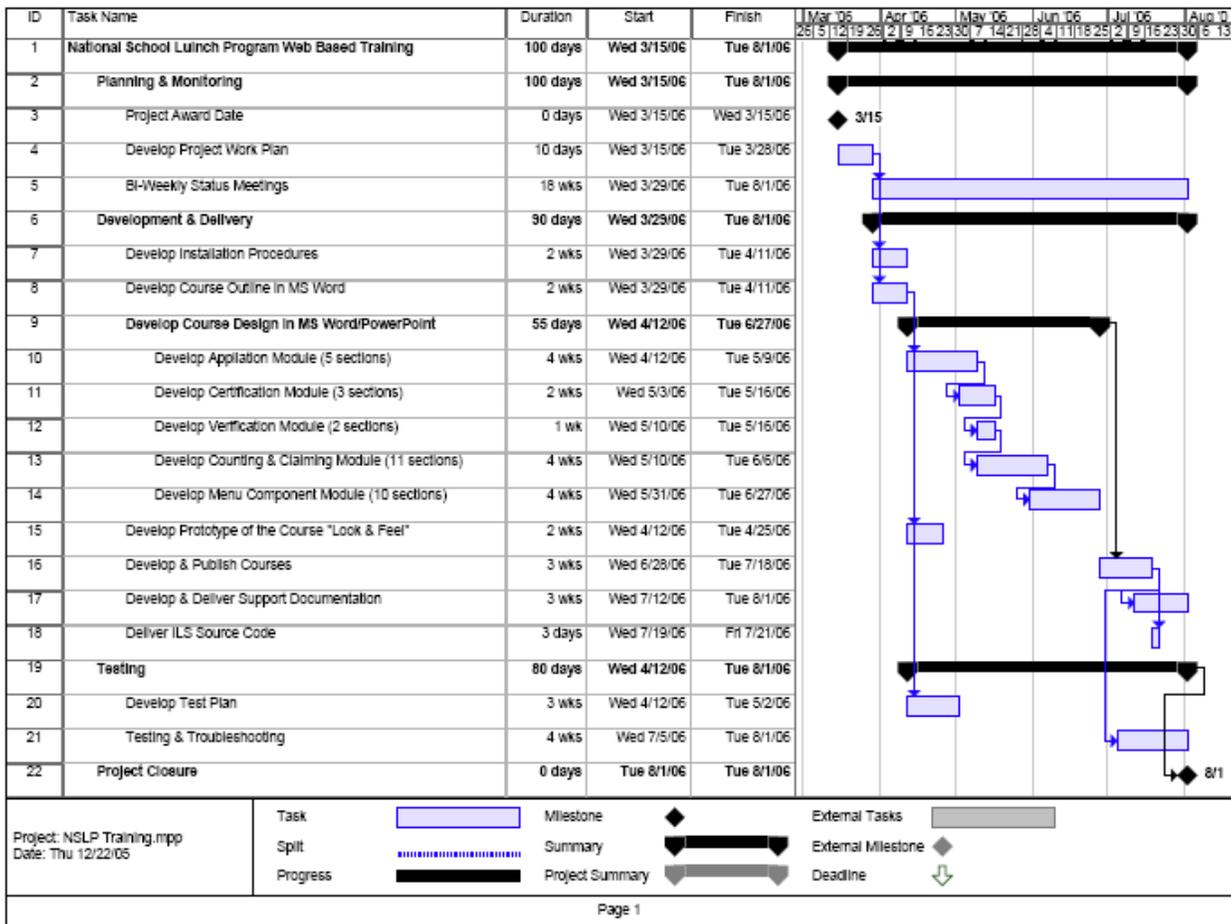
## Article 1, Attachment D

### Deliverables

Milestones	Deliverables	Acceptance Criteria
Phase I – Discovery Phase to be complete within <b>10 days</b> of contract signing	Project Plan to solidify project timeline (including identifying each phase) and staffing (state and contractor) plan through final implementation	Project Plan reviewed and approved by SOM.
Phase II – Design & Specification	Design prototype of Course “Look and Feel”	Course prototype design reviewed and approved by SOM.
	Functional Specification/Design	Functional Specification/Design reviewed and approved by SOM.
	Development Plan to communicate development and customization activities and points requiring customer interaction and user acceptance	Development Plan reviewed and approved by SOM.
	Reports Functional Specification	Reports Functional Specification – Reporting reviewed and approved by SOM.
	Training Plan	Training Plan reviewed and approved by SOM.
	Test Specifications (section 1.50I)	Test Specifications reviewed and approved by SOM.
Phase III – Development & Implementation	User Acceptance Test and PARE Plan	User Acceptance Test and PARE Plan reviewed and approved by SOM.
	Pilot Plan	Pilot Plan reviewed and approved by SOM.
	User Documentation	User Documentation reviewed and approved by SOM.
	System Administrator Documentation	System Administrator Documentation reviewed and approved by SOM.
	User Training Materials	User Training Materials reviewed and approved by SOM.
	System Administrator Training Materials	System Administrator Training Materials reviewed and approved by SOM.
	Deployment & Operations Guide	Deployment & Operations Guide reviewed and approved by SOM.
Phase IV – Production Preparation & Training	Software and hardware procurement and delivery	Software and hardware procured, delivered, and installed
	User and System Administrator Training to perform user and system administrator training.	Users have a working knowledge of STS and are prepared to leverage the application to complete daily tasks.
	User Acceptance and PARE Testing to facilitate User Acceptance Testing	Test results meet and/or exceed criteria outlined in User Acceptance Test and PARE Plan.
	Facilitate and support Pilot Testing	SOM confirms that Pilot System continues to meet and/or exceed criteria outlined in User Acceptance Test and PARE Plans.
	Support Plan to address alternative methods for providing user and administrator support (Section	Support Plan reviewed and approved by SOM.
Phase V –Deployment to be completed by <b>August 1, 2006</b>	Deployment and installation of application and hardware	We-based training course deployed successfully.

Milestones	Deliverables	Acceptance Criteria
	System Support and Maintenance to provide ongoing support and maintenance of solution	SOM confirms that Support Plan implemented per approved Support Plan.
	Backup and Recovery Plan. Prescriptive guidance regarding proper system backup and recovery methodologies	Backup & Recovery Plan reviewed, tested and approved by SOM.
	Post Project Analysis. Review engagement, outlining opportunities for improving ongoing communication and support	Post Project Analysis Document has been reviewed and approved by SOM.

## Article 1, Attachment E Project Plan



## Article 2 – General Terms and Conditions

### 2.10 Contract Structure and Administration

MPHI – ISG has read and agrees to all information as outlined in Article 2 from 2.011 through 2.331 in the bid number 07116200067.

#### **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 the Contract, but not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration. “Additional Service” does not include New Work.
- (d) “Amendment Labor Rates” means the schedule of fully-loaded hourly labor rates attached as **Article 1, Attachment C.**
- (e) “Audit Period” has the meaning given in **Section 2.111.**
- (f) “Business Day,” whether capitalized or not, shall mean any day other than a Saturday, Sunday or State-recognized legal holiday (as identified in the Collective Bargaining Agreement for State employees) from 8:00am EST through 5:00pm EST unless otherwise stated.
- (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 **Article 1, Section 1.201 and/or Attachment B,** as Key Personnel.
- (k) “New Work” means any Services/Deliverables outside the scope of the Contract and not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration. “New Work” does not include Additional Service.
- (l) “Services” means any function performed for the benefit of the State.
- (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 portion of the Services to, but does not include independent contractors engaged by Contractor solely in a staff augmentation role.
- (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 shall not be obliged or authorized to commence any work to implement a Statement of Work until authorized via a PO issued against this Contract, or an amendment to this Contract (see 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 Contract 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) Reserved.
- (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 Management and Budget, Office of Acquisition Services ("OAS") and The Department of Information Technology ("DIT") for the Department of Education ("MDE") (collectively, including all other relevant State of Michigan departments and agencies, the "State"). OAS is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. **OAS 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 the Office of Acquisition Services for this Contract is:

[Lisa Morrison](#)

Office of Acquisition Services  
Department of Management and Budget  
Mason Bldg, 2nd Floor  
PO Box 30026  
Lansing, MI 48909  
[morrisonl1@michigan.gov](mailto:morrisonl1@michigan.gov)  
517-241-2005

## 2.015 Contract Compliance Inspector

Upon receipt at OAS of the properly executed Contract, it is anticipated that the Director of DMB Acquisition Services, in consultation with DIT/MDE will direct that the person named below, or any other person so designated, be authorized to monitor and coordinate the activities for the 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 the Office of Acquisition Services.** The Contract Compliance Inspector for this Contract is:

Melanie Ashley  
Department of Information Technology  
Operations Center  
7285 Parsons Dr.  
Dimondale, Michigan 48821  
Email: [maashle@michigan.gov](mailto:maashle@michigan.gov)  
Phone: (517) 636-6407

## **2.016 Project Manager**

The following individual will oversee the project:

Barb Campbell  
Department of Education  
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### *2.020 Contract Objectives/Scope/Background*

## **2.021 Background**

See Article 1.002

## **2.022 Purpose**

See Article 1.001

## **2.023 Objectives and Scope**

See Article 1.101

## **2.024 Interpretation**

Sections 2.021 through 2.023 are intended to provide background and context for this Contract and are not intended to expand the scope of the obligations under this Contract or to alter the plain meaning of the terms and conditions of this Contract. However, to the extent the terms and conditions of this Contract are unclear or otherwise ambiguous, such terms and conditions are to be interpreted and construed in light of the provisions of this Section.

## **2.025 Form, Function and Utility**

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

### *2.030 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 the Contract has been issued.

## 2.032 Contract Term

This Contract is for a period of three (3) years commencing on the date that the last signature required to make the Contract enforceable is obtained. All outstanding Purchase Orders shall also expire upon the termination (cancellation for any of the reasons listed in 2.210) of the Contract, unless otherwise extended pursuant to the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the 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 thirty (30) days before its expiration. The Contract may be renewed for up to two (2) additional one (1) year periods. 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. All persons assigned by Contractor to the performance of Services under this Contract shall be employees of Contractor or its majority-owned (directly or indirectly, at any tier) subsidiaries (or a State-approved Subcontractor) and shall be fully qualified to perform the work assigned to them. Contractor shall include a similar provision in any subcontract entered into with a Subcontractor. For the purposes of this Contract, independent contractors engaged by Contractor solely in a staff augmentation role shall be treated by the State as if they were employees of Contractor for this Contract only; however, the State understands that the relationship between Contractor and Subcontractor is an independent contractor relationship.

(b) Key Personnel

(i) In discharging its obligations under this Contract, Contractor shall provide the named Key Personnel on the terms indicated. **Article 1, Attachment B** provides an organization chart showing the roles of certain Key Personnel, if any.

(ii) Key Personnel shall be dedicated as defined in **Article 1, Attachment B** to the Project for its duration in the applicable Statement of Work with respect to other individuals designated as Key Personnel for that Statement of Work.

(iii) The State will have the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the State of the proposed assignment, will introduce the individual to the appropriate State representatives, and will 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 shall be based on legitimate, good-faith reasons. Proposed alternative for the individual denied, shall be fully qualified for the position.

(iv) Contractor shall not remove any Key Personnel from their assigned roles or the 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 shall be considered an unauthorized removal ("Unauthorized Removal"). It shall 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 for cause termination of the Key Personnel's employment. It shall 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 thirty (30) days of shadowing unless parties agree to a different time period. The Contractor with the State shall review any Key Personnel replacements, and appropriate transition planning will be established. Any Unauthorized Removal may be considered by the State to be a material breach of the Contract, in respect of which the State may elect to exercise its rights under **Section 2.210**.

(v) It is acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of the Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under **Section 2.210**, the State may assess liquidated damages against Contractor as specified below.

For the Unauthorized Removal of any Key Personnel designated in the applicable Statement of Work, the liquidated damages amount shall be \$25,000.00 per individual provided Contractor identifies a replacement approved by the State pursuant to **Section 2.041** and assigns the replacement to the Project to shadow the Key Personnel s/he is replacing for a period of at least thirty (30) days prior to such Key Personnel's removal.

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

(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 will give the State at least ten (10) Business Days 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 of Contractor personnel found, in the judgment of the State, to be unacceptable. The State's request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good-faith reasons. Replacement personnel for the removed person shall 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 SLAs for the affected Service will not be counted in **Section 2.076** 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. This includes secretarial, clerical and Contract administration support staff necessary for Contractor to perform its obligations hereunder.

(ii) Contractor shall 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 Contract tasks in accordance with the Contract time schedule as demonstrated by Contractor's failure to meet mutually agreed to time schedules, Contractor shall 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 the Contract 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. Accordingly, if the State determines that the turnover rate of such employees is excessive and so notifies Contractor, Contractor will meet with the State to discuss the reasons for the turnover rate and otherwise use commercially reasonable efforts to minimize such turnover rate. If requested to do so by the State, Contractor will submit to the State its proposals for reducing the turnover rate to an acceptable level. In any event, notwithstanding the turnover of personnel, Contractor remains obligated to perform the Services without degradation and in accordance with the State-approved Contract schedule.

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

#### **2.042 Contractor Identification**

Contractor employees shall 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 Subcontractors 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. The State acknowledges that Contractor's time schedule for the Contract is very specific and agrees not to unnecessarily or unreasonably interfere with, delay or otherwise impeded Contractor's performance under this Contract with such requests for access.

#### **2.044 Subcontracting by Contractor**

(a) Contractor shall have full responsibility for the successful 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) Contractor shall not delegate any duties under this Contract to a Subcontractor unless the Department of Management and Budget, Office of Acquisition Services has given written consent to such delegation. The State shall have the right of prior written approval of all Subcontractors and to require Contractor to replace any Subcontractors found, in the reasonable judgment of the State, to be unacceptable. The State's request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good-faith reasons. Replacement Subcontractor(s) for the removed Subcontractor shall be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed Subcontractor, the State will agree to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with a removed Subcontractor results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in **Section 2.076** for a time agreed upon by the parties.

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

(d) Except where specifically approved in writing by the State on a case-by-case basis, Contractor shall 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 shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the Contract.

#### **2.045 Contractor Responsibility for Personnel**

Contractor shall be responsible for all acts and omissions of its employees, as well as the acts and omissions of any other personnel furnished by Contractor to perform the Services.

#### *2.050 State Standards*

#### **2.051 Existing Technology Standards**

The Contractor will adhere to all existing standards as described within the comprehensive listing of the State's existing technology standards at [http://www.michigan.gov/dit/0,1607,7-139-30639\\_30655---,00.html](http://www.michigan.gov/dit/0,1607,7-139-30639_30655---,00.html).

#### **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 shall 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 DIT, Enterprise Application Services Office, e-Michigan Web Development team.

Contractors that are compelled to use alternate tools must have received an exception from DIT, 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/ditservice/0,1607,7-179-25781-73760--00.html>. All Contractor employees must be required, in writing, to agree to the State's Acceptable Use Policy before accessing the State system. The State reserves the right to terminate Contractor's access to the State system if a violation occurs.

#### 2.060 Deliverables

#### **2.061 Ordering**

(a) Any Services/Deliverables to be furnished under this Contract shall 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, the Contract shall take precedence as stated in **Section 2.293**. In no event shall 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.

(b) DIT will continue to oversee the use of this Contract by End Users. DIT may, in writing, delegate to agencies the authority to submit requests for certain services directly to the Contractor. DIT may also designate, in writing, some services as non-delegated and require DIT review and approval before agency acquisition. DIT will use Contractor provided management reports and periodic random agency audits to monitor and administer contract usage for delegated services.

#### **2.062 Software**

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

#### **2.063 Hardware**

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

#### **2.064 Equipment to be New and Prohibited Products**

##### (a) Equipment to be New

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

##### (b) Prohibited Products

The State will not accept salvage, distressed, outdated or discontinued merchandise. Shipping of such merchandise to any State agency, as a result of an order placed against the Contract, shall be considered

default by the Contractor of the terms and conditions of the Contract and may result in cancellation of the Contract by the State. The brand and product number offered for all items shall remain consistent for the term of the Contract, unless Acquisition Services has approved a change order pursuant to **Section 2.106**.

## 2.070 Performance

### **2.071 Performance, In General**

The State engages Contractor to execute the Contract and perform the Services/provide the Deliverables, and Contractor undertakes to execute and complete the 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 shall 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 shall notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and, in such event, shall 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 shall notify the State in a timely manner and shall use commercially reasonable efforts to perform its obligations in accordance with such Contract time periods notwithstanding the State's failure. Contractor will not be in default for a delay in performance to the extent such delay is caused by the State.

### **2.073 Reserved - Liquidated Damages**

### **2.074 Bankruptcy**

If Contractor shall file for protection under the bankruptcy laws, or if an involuntary petition shall be filed against Contractor and not removed within thirty (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 shall 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, at its option, may take possession of the "Work in Process" and finish such Works in Process by whatever appropriate method the State may deem expedient. Contractor will fix appropriate notices or labels on the Work in Process to indicate ownership by the State. To the extent reasonably possible, materials and Work in Process shall be stored separately from other stock and marked conspicuously with labels indicating ownership by the State.

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 Reserved - Time is of the Essence**

### **2.076 Reserved - Service Level Agreements (SLAs)**

## 2.080 Delivery and Acceptance of Deliverables

### **2.081 Delivery of Deliverables**

**Article 1, Attachment D** contains a list of the Deliverables to be prepared and delivered by Contractor including, for each Deliverable, the scheduled delivery date and a designation of whether the Deliverable is a document (“Written Deliverable”) or a Custom Software Deliverable. All Deliverables shall be completed and delivered for State review and written approval and, where applicable, installed in accordance with the State-approved delivery schedule and any other applicable terms and conditions of this Contract.

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

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

### **2.082 Contractor System Testing**

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

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

Contractor’s System Testing will also include Integration Testing of each Custom Software Deliverable to ensure proper inter-operation with all prior software Deliverables, interfaces and other components that are intended to inter-operate with such Custom Software Deliverable, and will include Regression Testing, volume and stress testing to ensure that the Custom Software Deliverables are able to meet the State’s projected growth in the number and size of transactions to be processed by the Application and number of users, as such projections are set forth in the applicable Statement of Work.

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

Within five (5) Business Days following the completion of System Testing pursuant to **Section 2.080**, Contractor shall provide to the State a testing matrix establishing that testing for each condition identified in the System Testing plans has been conducted and successfully concluded. To the extent that testing occurs on State premises, the State shall be entitled to observe or otherwise participate in testing under this Section as the State may elect.

### **2.083 Approval of Deliverables, In General**

All Deliverables (Written Deliverables and Custom Software Deliverables) require formal written approval by the State, in accordance with the following procedures. Formal approval by the State requires that the Deliverable be confirmed in writing by the State to meet its specifications which, in the case of Custom Software Deliverables, will include the successful completion of State User Acceptance Testing, to be led by the State with the support and assistance of Contractor. The parties acknowledge that the approval process

set forth herein will be facilitated by ongoing consultation between the parties, visibility of interim and intermediate Deliverables and collaboration on key decisions.

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

Before commencement of its review or testing of a Deliverable, the State may inspect the Deliverable to confirm that all components of the Deliverable (e.g., software, associated documentation, and other materials) have been delivered. If the State determines that the Deliverable is incomplete, the State may refuse delivery of the Deliverable without performing any further inspection or testing of the Deliverable. Otherwise, the review period will be deemed to have started on the day the State receives the Deliverable and the applicable certification by Contractor in accordance with **Section 2.080**.

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

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

The State, at any time and in its own discretion, may halt the UAT or approval process if such process reveals deficiencies in or problems with a Deliverable in a sufficient quantity or of a sufficient severity as to make the continuation of such process unproductive or unworkable. In such case, the State may return the applicable Deliverable to Contractor for correction and re-delivery prior to resuming the review or UAT process and, in that event, Contractor will correct the deficiencies in such Deliverable in accordance with the Contract, as the case may be.

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

#### **2.084 Process for Approval of Written Deliverables**

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

charge. Upon receipt of a corrected Written Deliverable from Contractor, the State will have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Written Deliverable to confirm that the identified deficiencies have been corrected.

## **2.085 Process for Approval of Custom Software Deliverables**

The State will conduct UAT of each Custom Software Deliverable in accordance with the following procedures to determine whether it meets the criteria for State approval – i.e., whether it conforms to and performs in accordance with its specifications without material deficiencies. Within thirty (30) days (or such other number of days as the parties may agree to in writing) prior to Contractor's delivery of any Custom Software Deliverable to the State for approval, Contractor shall provide to the State a set of proposed test plans, including test cases, scripts, data and expected outcomes, for the State's use (which the State may supplement in its own discretion) in conducting UAT of the Custom Software Deliverable. Contractor, upon request by the State, shall provide the State with reasonable assistance and support during the UAT process.

For the Custom Software Deliverables listed in **Article 1, Attachment D**, the State Review Period for conducting UAT will be the number of days agreed in writing by the parties (failing which it shall be forty-five (45) days by default). The State Review Period for each Custom Software Deliverable will begin when Contractor has delivered the Custom Software Deliverable to the State accompanied by the certification required by **Section 2.080** and the State's inspection of the Deliverable has confirmed that all components of it have been delivered.

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

Within three (3) business days after the end of the State Review Period, the State will give Contractor a written notice indicating the State's approval or rejection of the Custom Software Deliverable according to the criteria and process set out in this **Section 2.080**.

## **2.086 Final Acceptance**

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

## **2.090 Financial**

### **2.091 Pricing**

#### **(a) Fixed Prices for Services/Deliverables**

Each Statement of Work/PO issued under this Contract shall specify (or indicate by reference to the appropriate Contract Exhibit) the firm, fixed prices for all Services/Deliverables, and the associated payment milestones and payment amounts. To the extent the parties agree that certain specific Services will be provided on a time and materials basis, such Services shall be provided at the Amendment Labor Rates (**Article 1, Attachment C**). The State may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator,

after negotiation. Contractor 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 shall negotiate an equitable reduction in Contractor's charges under such Statement of Work commensurate with the reduction in scope, using the rates in **Article 1, Attachment C** unless specifically identified in an applicable Statement of Work.

(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

All time and material charges will be at the rates specified in **Article 1, Attachment C**.

## 2.092 Invoicing and Payment Procedures and Terms

(a) Invoicing and Payment – In General

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

(ii) Each Contractor invoice will 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. The charges for Services billed on a time and materials basis shall be determined based on the actual number of hours of Services performed, at the applicable Labor Rates specified in **Article 1, Attachment C**. Invoices for Services performed on a time and materials basis will show, for each individual, the number of hours of Services performed during the billing period, the billable skill/labor category for such person and the applicable hourly billing rate. Prompt payment by the State is contingent on the Contractor's invoices showing the amount owed by the State minus any holdback amount to be retained by the State in accordance with **Section 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 forty-five (45) days after receipt, provided the State determines that the invoice was properly rendered.

(b) Taxes (See Section 2.305 and Article 3, Section 3.022-3.024 for additional )

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 shall not be included in 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 [http://www.mi.gov/dmb/0,1607,7-150-9141\\_13132---,00.html](http://www.mi.gov/dmb/0,1607,7-150-9141_13132---,00.html) 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 shall 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 the 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 shall constitute a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still unsettled.

### **2.093 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 Reserved - Holdback**

### **2.095 Electronic Payment Availability**

Electronic transfer of funds is available to State contractors. Contractor is required to register with the State electronically at <http://www.cpexpress.state.mi.us>. Public Act 533 of 2004, requires all payments be transitioned over to EFT by October, 2005.

## **2.100 Contract Management**

### **2.101 Contract Management Responsibility**

(a) Contractor shall have overall responsibility for managing and successfully performing and completing the Services/Deliverables, subject to the overall direction and supervision of the State and with the participation and support of the State as specified in this Contract. Contractor's duties 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, Attachment E** (Project Plan) is likely to delay the timely achievement of any Contract tasks.

(b) The Services/Deliverables will be provided by the Contractor either directly or through its affiliates, subsidiaries, subcontractors or resellers. 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, shall 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 the Contract and the applicable Statements of Work.

### **2.103 Reports and Meetings**

(a) Reports.

Within thirty (30) days after the Effective Date, the parties shall determine an appropriate set of periodic reports to be issued by Contractor to the State. Such reports may include:

- (i) separately address Contractor's performance in each area of the Services;
- (ii) for each area of the Services, assess the degree to which Contractor has attained or failed to attain the pertinent objectives in that area, including on-time completion and delivery of Deliverables;
- (iii) explain the reasons for any failure to achieve on-time completion and delivery of Deliverables and include a plan for corrective action where appropriate;

- (iv) describe any circumstances that Contractor anticipates will impair or prevent on-time completion and delivery of Deliverables in upcoming reporting periods;
- (v) include plans for corrective action or risk mitigation where appropriate and describe the status of ongoing problem resolution efforts;
- (vi) provide reports setting forth a comparison of actual hours spent by Contractor (including its augmented personnel and Subcontractors) in performing the Project versus hours budgeted by Contractor.
- (vii) set forth a record of the material personnel changes that pertain to the Services and describe planned changes during the upcoming month that may affect the Services.
- (viii) include such documentation and other information may be mutually agreed to verify compliance with, and meeting the objectives of, this Contract.
- (ix) set forth an updated schedule that provides information on the status of upcoming Deliverables, expected dates of delivery (or redelivery) of such Deliverables and estimates on timing for completion of the Project.

(b) Meetings.

Within thirty (30) days after the Effective Date, the parties shall determine an appropriate set of meetings to be held between representatives of the State and Contractor. Contractor shall prepare and circulate an agenda sufficiently in advance of each such meeting to give participants an opportunity to prepare for the meeting. Contractor shall incorporate into such agenda items that the State desires to discuss. At the State's request, Contractor shall prepare and circulate minutes promptly after a meeting.

#### **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 shall be done in accordance with applicable State procedures, including security, access and configuration management procedures.

#### **2.105 Reserved**

#### **2.106 Change Requests**

The State reserves the right to request from time to time, any changes to the requirements and specifications of the Contract and the work to be performed by the Contractor under the Contract. During the course of ordinary business, it may become necessary for the State to discontinue certain business practices or create Additional Services/Deliverables. At a minimum, to the extent applicable, 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 the 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 shall 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 the Contract, but which the Contractor reasonably and in good faith believes are not included within the Statements of Work, then before performing such services or providing such deliverables, the Contractor shall notify the State in writing that it considers the services or deliverables to be an Additional Service/Deliverable for which the Contractor should receive additional compensation. If the Contractor does not so notify the State, the Contractor shall have no right to claim thereafter that it is entitled to additional compensation for performing that service or providing that deliverable. If the Contractor does so notify the State, then such a service or deliverable shall be governed by the Change Request procedure in this Section.

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

(a) 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 the Contract completion schedule or the amount of compensation due Contractor (a "Change"), the State shall submit a written request for Contractor to furnish a proposal for carrying out the requested Change (a "Change Request").

(ii) Contractor Recommendations

Contractor shall be entitled to propose a Change to the State, on its own initiative, should it be of the opinion that this would benefit the Contract.

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

(iv) By giving Contractor written notice within a reasonable time, the State shall be entitled to accept a Contractor proposal for Change, to reject it or to reach another agreement with Contractor. Should the parties agree on carrying out a Change, a written Contract Change Notice shall 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").

(v) No proposed Change shall be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the Department of Management and Budget, Office of Acquisition Services.

(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 shall be considered to be performed gratuitously by Contractor, and Contractor shall 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 the Contract.

## 2.107 Management Tools

Contractor will use an automated tool for planning, monitoring and tracking the Contract's progress. In addition, Contractor shall use automated project management tools as reasonably necessary to perform the Services, which tools shall include the capability to produce through the end of the Contract: (i) staffing tables with names of personnel assigned to Contract tasks, (ii) project plans showing tasks, subtasks, Deliverables and the resources required and allocated to each (including detailed plans for all Services to be performed within the next sixty (60) days, updated semi-monthly) and (iii) graphs showing critical events, dependencies and decision points during the course of the Contract. Any tool(s) used by Contractor for such purposes must produce information of a type and in a manner and format that will support reporting in compliance with the State's standard to the extent such information is described with reasonable detail in the Statements of Work and to the extent the related work is of sufficient project complexity and duration to warrant such reporting.

## 2.110 Records and Inspections

### **2.111 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 at all reasonable times, the State's representatives shall be allowed to inspect, monitor, or otherwise evaluate the work being performed and to the extent that such access will not reasonably 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.

(b) **Examination of Records.** 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 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, 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 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.

(b) In addition to other available remedies, the difference between the payment received and the correct payment amount is greater than ten percent (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 shall 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 shall 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 shall have reasonable access to, and unless agreed otherwise by the parties in writing shall 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 shall be responsible for returning to the State any State-furnished equipment, facilities and other resources when no longer required for the Contract in the same condition as when provided by the State, reasonable wear and tear excepted.

(d) Except as otherwise provided in **Section 2.220**, the State's failure to perform its responsibilities as set forth in this Contract shall 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 shall authorize the investigation of its personnel proposed to have access to State facilities and systems on a case by case basis. The scope of the background check is at the discretion of the State and the results will be used to determine Contractor personnel eligibility for working within State facilities and systems. Such investigations will include Michigan State Police Background checks (ICHAT) and may include the National Crime Information Center (NCIC) Finger Prints. Proposed Contractor personnel may be required to complete and submit an RI-8 Fingerprint Card for the NCIC Finger Print Check. Any request for background checks will be initiated by the State and will be reasonably related to the type of work requested.

All Contractor personnel will also be expected to comply with the State's security and acceptable use policies for State IT equipment and resources. See <http://www.michigan.gov/ditservice/0,1607,7-179-25781-73760--00.html>. Furthermore, Contractor personnel will be expected to agree to the State's security and acceptable use policies before the Contractor personnel will be accepted as a resource to perform work for the State. It is expected the Contractor will present these documents to the prospective employee before the Contractor presents the individual to the State as a proposed resource. Contractor staff will be expected to comply with all Physical Security procedures in place within the facilities where they are working.

## 2.140 Reserved

## 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 shall mean all non-public proprietary information of Contractor (other than Confidential Information of the State as defined below) which is marked confidential, restricted, proprietary or with a similar designation. "Confidential Information" of the State shall 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" shall 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 shall 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 this Section, 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 shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor shall report to the State in writing any use or disclosure of Confidential Information, whether suspected or actual, other than as provided for by the Contract within ten (10) days of becoming aware of such use or disclosure or such shorter time period as is reasonable under the circumstances.

## 2.158 Survival

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

## 2.159 Destruction of Confidential Information

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

### 2.160 Proprietary Rights

## 2.161 Ownership

**Ownership of Work Product by State.** All Deliverables shall be owned by the State and shall be considered works made for hire by the Contractor for the State. The State shall own all United States and international copyrights, trademarks, patents or other proprietary rights in the Deliverables.

**Vesting of Rights.** With the sole exception of any preexisting licensed works identified in **Exhibit J**, the Contractor shall 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 shall confirm such assignment by execution and delivery of the assignments, confirmations of assignment, or other written instruments as the State may request. The State shall 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.

- (a) Definition. "Source Code Escrow Package" shall mean:
- (i) A complete copy in machine-readable form of the source code and executable code of the Licensed Software, including any updates or new releases of the product;
  - (ii) A complete copy of any existing design documentation and user documentation, including any updates or revisions; and/or
  - (iii) Complete instructions for compiling and linking every part of the source code into executable code for purposes of enabling verification of the completeness of the source code as provided below. Such instructions shall include precise identification of all compilers, library packages, and linkers used to generate executable code.
- (b) Delivery of Source Code into Escrow. Contractor shall deliver a Source Code Escrow Package to the Escrow Agent, pursuant to the Escrow Contract, which shall be entered into on commercially reasonable terms subject to the provisions of this Contract within thirty (30) days of the execution of this Contract.
- (c) Delivery of New Source Code into Escrow. If at anytime during the term of this Contract, the Contractor provides a maintenance release or upgrade version of the Licensed Software, Contractor shall within ten (10) days deposit with the Escrow Agent, in accordance with the Escrow Contract, a Source Code Escrow Package for the maintenance release or upgrade version, and provide the State with notice of the delivery.
- (d) Verification. The State reserves the right at any time, but not more than once a year, either itself or through a third party contractor, upon thirty (30) days written notice, to seek verification of the Source Code Escrow Package.
- (e) Escrow Fees. All fees and expenses charged by the Escrow Agent will be paid by the Contractor.
- (f) Release Events. The Source Code Escrow Package may be released from escrow to the State, temporarily or permanently, upon the occurrence of one or more of the following:
- (i) The Contractor becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under bankruptcy or insolvency law, whether domestic or foreign;
  - (ii) The Contractor has wound up or liquidated its business voluntarily or otherwise and the State has reason to believe that such events will cause the Contractor to fail to meet its warranties and maintenance obligations in the foreseeable future;
  - (iii) The Contractor voluntarily or otherwise discontinues support of the provided products or fails to support the products in accordance with its maintenance obligations and warranties.
- (g) Release Event Procedures. If the State desires to obtain the Source Code Escrow Package from the Escrow Agent upon the occurrence of an Event in **Section 2.162(f)**, then:
- (i) The State shall comply with all procedures in the Escrow Contract;
  - (ii) The State shall maintain all materials and information comprising the Source Code Escrow Package in confidence in accordance with this Contract;
  - (iii) If the release is a temporary one, then the State shall promptly return all released materials to Contractor when the circumstances leading to the release are no longer in effect.
- (h) License. Upon release from the Escrow Agent pursuant to an event described in **Section 2.162(f)**, the Contractor automatically grants the State a non-exclusive, irrevocable license to use, reproduce, modify, maintain, support, update, have made, and create Derivative Works. Further, the State shall have the right to use the Source Code Escrow Package in order to maintain and support the Licensed Software so that it can be used by the State as set forth in this Contract.

(i) Derivative Works. Any Derivative Works to the source code released from escrow which are made by or on behalf of the State shall be the sole property of the State. The State acknowledges that its ownership rights are limited solely to the Derivative Works and do not include any ownership rights in the underlying source code.

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

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

### **2.164 Ownership of Materials**

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

### **2.165 Standard Software**

If applicable and necessary, all Standard Software used in performing the Services shall 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 **Exhibit J**.

### **2.166 Pre-existing Materials for Custom Software Deliverables**

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

### **2.167 General Skills**

Notwithstanding anything to the contrary in this Section, each party, its Subcontractors and their personnel shall 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 shall fulfill all of its obligations under this Contract. The performance of all obligations under this Contract shall be provided in a timely, professional, and workman-like manner and shall meet the performance and operational standards required under this Contract.
- (b) The Contract Appendices, Attachments and Exhibits identify the equipment and software and services necessary for the Deliverable(s) to perform and Services to operate in compliance with the Contract's requirements and other standards of performance.
- (c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by Contractor under this Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by Contractor to the State under this Contract, nor their use by the State, will infringe the patent, copyright, trade secret, or other proprietary rights of any third party.
- (d) If, under this Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to such items 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.
- (e) The contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into this Contract, on behalf of Contractor.
- (f) It is qualified and registered to transact business in all locations where required.
- (g) Neither the Contractor nor any Affiliates, nor any employee of either, has, 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.
- (h) Neither Contractor nor any Affiliates, nor any employee of either has accepted or shall 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 shall not attempt to influence any State employee by the direct or indirect offer of anything of value.
- (i) Neither Contractor nor any Affiliates, nor any employee of either has paid or agreed to pay any person, other than bona fide employees and consultants working solely for Contractor or 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.
- (j) The prices proposed by Contractor were arrived at independently, without consultation, communication, or agreement with any other bidder for the purpose of restricting competition; the prices quoted were not knowingly disclosed by Contractor to any other bidder; and no attempt was made by

Contractor to induce any other person to submit or not submit a proposal for the purpose of restricting competition.

(k) All financial statements, reports, and other information furnished by Contractor to the State as part of 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.

(m) 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.

(n) 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 (5) 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 the Contract) for a period of ninety (90) days. In the event of a breach of this warranty, Contractor will promptly correct the affected Deliverable(s) at no charge to the State.

### **(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 will use up-to-date commercial virus detection software to detect and remove any viruses from any software prior to delivering it to the State.

(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 shall include, at no added cost to the State, design and performance so the State shall not experience software abnormality and/or the generation of incorrect results from the software, due to date oriented processing, in the operation of the business of the State of Michigan.

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

(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 shall provide in writing the name and use of any Third-party Software, including information regarding the Contractor's authorization to include and utilize such software. The notice shall include a copy of any ownership agreement or license that authorizes the Contractor to use the Third-party Software.

### **2.173 Equipment Warranty**

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

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

Within 5 business days of notification from the State, the Contractor shall adjust, repair or replace all equipment that is defective or not performing in compliance with the Contract. The Contractor shall assume all costs for replacing parts or units and their installation including transportation and delivery fees, if any.

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

The Contractor agrees that all warranty service it provides under this Contract shall be performed by original equipment manufacturer (OEM) trained, certified and authorized technicians.

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

## 2.174 Physical Media Warranty

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

## 2.175 DISCLAIMER

THE FOREGOING EXPRESS WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES AND EACH PARTY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## 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 shall 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 shall 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 shall 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 shall be issued by companies that have been approved to do business in the State.

See [http://www.mi.gov/cis/0,1607,7-154-10555\\_22535---,00.html](http://www.mi.gov/cis/0,1607,7-154-10555_22535---,00.html).

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

Before the Contract is signed by both parties or before the purchase order is issued by the State, the Contractor must furnish to the Director of Acquisition Services, certificate(s) of insurance verifying insurance coverage ("Certificates"). The Certificate must be on the standard "accord" form or equivalent. **THE 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) shall contain a provision indicating that coverages afforded under the policies WILL NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED without THIRTY (30) days prior written notice, except for ten (10) days for non-payment of premium, having been given to the Director of Acquisition Services, Department of Management and Budget. The notice must include the Contract or Purchase Order number affected and be mailed to: Director, Acquisition Services, Department of Management and Budget, 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 also agrees to 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, insurance naming the State as a loss payee, 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 one million dollars (\$1,000,000.00) with a maximum deductible of fifty thousand dollars (\$50,000.00).

6. Umbrella or Excess Liability Insurance in a minimum amount of ten million dollars (\$10,000,000.00), which shall apply, at a minimum, to the insurance required in Subsection 1 (Commercial General Liability) above.

7. Professional Liability (Errors and Omissions) Insurance with the following minimum coverage: three million dollars (\$3,000,000.00) each occurrence and three million dollars (\$3,000,000.00) annual aggregate.

8. Fire and Personal Property Insurance covering against any loss or damage to the office space used by Contractor for any reason under this Contract, and the equipment, software and other contents of such office space, including without limitation, those contents used by Contractor to provide the Services to the State, up to the replacement value thereof, where such office space and its contents are under the care, custody and control of Contractor. Such policy shall cover all risks of direct physical loss or damage, including without limitation, flood and earthquake coverage and coverage for computer hardware and software. The State shall be endorsed on the policy as a loss payee as its interests appear.

(b) Subcontractors

Except where the State has approved in writing a Contractor subcontract with other insurance provisions, Contractor shall 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 shall furnish to the Office of Acquisition Services certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor shall 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 shall maintain all required insurance coverage throughout the term of the Contract and any extensions thereto and, in the case of claims-made Commercial General Liability policies, shall secure tail coverage for at least three (3) years following the expiration or termination for any reason of this Contract. The minimum limits of coverage specified above are not intended, and shall not be construed, to limit any liability or indemnity of Contractor under this Contract to any indemnified party or other persons. Contractor shall 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 thirty (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 shall pay the entire cost (or any part thereof) upon demand by the State.

## 2.191 Indemnification

(a) General Indemnification

To the extent permitted by law, the Contractor shall 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 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.

(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 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 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 shall 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 shall 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 the 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 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 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.

## **2.200 Limits of Liability and Excusable Failure**

### **2.201 Limits of Liability**

The Contractor's liability for damages to the State shall be limited to two times the value of the Contract or \$200,000 (for low risk contracts – Select a higher amount for moderate to high risk contracts) 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; 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.

Neither the Contractor nor the State shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability shall not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

## **2.202 Excusable Failure**

Neither party will be liable for any default, damage or delay in the performance of its obligations under the Contract to the extent such default, damage or delay is caused by government regulations or requirements (executive, legislative, judicial, military or otherwise), power failure, electrical surges or current fluctuations, lightning, earthquake, war, water or other forces of nature or acts of God, delays or failures of transportation, equipment shortages, suppliers' failures, or acts or omissions of common carriers, fire; riots, civil disorders; strikes or other labor disputes, embargoes; injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of 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, 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 ten (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 shall not be liable for payment for the unperformed Services/ Deliverables not provided under the Contract for so long as the delay in performance shall continue; (b) the State may terminate any portion of the Contract so affected and the charges payable there under shall 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 shall pay for Services/Deliverables 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 the Contract except to the extent that a Subcontractor is itself subject to an Excusable Failure condition described above and Contractor cannot reasonably circumvent the effect of the Subcontractor's default or delay in performance through the use of alternate sources, workaround plans or other means.

## **2.203 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 thirty (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.

(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 shall 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 shall not be considered by the parties to be consequential, indirect or incidental damages, and shall not be excluded by any other terms otherwise included in this Contract, provided such costs are not in excess of fifty percent (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 shall 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 shall 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 contract pursuant to the provisions of this section, that termination for cause shall be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties shall 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 shall be left to the sole discretion of the State and may include, but not necessarily be limited to (a) the State no longer needs the Services or products specified in the Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Services no longer practical or feasible, (c) unacceptable prices for Additional Services or New Work requested by the State, or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any RFP issued by the State. The State may terminate this Contract for its convenience, in whole or in part, by giving Contractor written notice at least thirty (30) days prior to the date of termination. If the State chooses to terminate this Contract in part, the charges payable under this Contract shall be equitably adjusted to reflect those Services/Deliverables that are terminated. Services and related provisions of this Contract that are terminated for cause shall 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 shall 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 shall give Contractor at least thirty (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 thirty (30) days before the funding cutoff).

(b) If funding for the Contract is reduced by law, or funds to pay Contractor for the agreed-to level of the Services or production of Deliverables to be provided by Contractor are not appropriated or otherwise made available, the State may, upon thirty (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 shall 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 shall (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 the Contract, Contractor will transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables intended to be transferred to the State at the termination of the Contract and which are resulting from the Contract (which shall 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 maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract.

(b) In the event the State terminates this Contract prior to its expiration for its own convenience, the State shall 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, 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 shall, at the option of the State, become the State's property, and Contractor shall be entitled to receive equitable fair compensation for such Deliverables. Regardless of the basis for the termination, the State shall 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 shall 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 shall 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 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 ninety (90) days. These efforts shall include, but are not limited to, the following:

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

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

(d) Software. - The Contractor shall reasonably assist the State in the acquisition of any Contractor software required to perform the Services/use the Deliverables under this Contract. This shall 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 the Contract, transfer back to the State at their current revision level. Upon notification by the State, Contractor may be required to freeze all non-critical changes to Deliverables/Services.

(e) Payment - If the transition results from a termination for any reason, reimbursement shall be governed by the termination provisions of this Contract. If the transition results from expiration, the Contractor will be reimbursed for all reasonable transition costs (i.e. costs incurred within the agreed period after contract expiration that result from transition operations) at the rates specified by **Exhibit D**. The Contractor will 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 breaches its other obligations under this Contract to an extent that makes it impossible or commercially impractical for Contractor 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 thirty (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 the Contract for a period of up to ninety (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 shall be specifically identified as such and shall indicate that it is issued under this **Section 2.230**. Upon receipt of the stop work order, Contractor shall 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 shall 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 shall resume work. The parties shall agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if: (a) the stop work order results in an increase in the time required for, or in Contractor's costs properly allocable to, the performance of any part of the Contract; and (b) Contractor asserts its right to an equitable adjustment within thirty (30) calendar days after the end of the period of work stoppage; provided that, if the State decides the facts justify the action, the State may receive and act upon a Contractor proposal submitted at any time before final payment under the Contract. Any adjustment will conform to the requirements of **Section 2.106**.

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

## 2.240 Reserved

## 2.250 Dispute Resolution

### **2.251 In General**

Any claim, counterclaim, or dispute between the State and Contractor arising out of or relating to the Contract or any Statement of Work shall be resolved as follows. For all Contractor claims seeking an increase in the amounts payable to Contractor under the Contract, or the time for Contractor's performance, Contractor shall 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 shall be resolved under the 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 shall meet with the Director of Acquisition Services, DMB, 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 shall meet 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 shall 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 the 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 sixty (60) calendar days, the Director of Acquisition Services, DMB, or designee, shall issue a written opinion regarding the issue(s) in dispute within thirty (30) calendar days. The opinion regarding the dispute shall 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 the 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 the 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 the 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 the 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 the Contract, Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment,

or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, 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 the Contract.

## **2.262 Unfair Labor Practices**

Pursuant to 1980 PA 278, MCL 423.231, *et seq.*, the State shall not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled 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 the Contract, shall 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 the Contract, the name of Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of Contractor appears in the register.

## **2.263 Workplace Safety and Discriminatory Harassment**

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

### 2.270 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 the 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 the Contract Administrator within thirty (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 shall 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) Contractor shall make the following notifications in writing:

(1) Within thirty (30) days of Contractor becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor shall notify the Office of Acquisition Services.

(2) Contractor shall also notify the Office of Acquisition Services within thirty (30) days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.

(3) Contractor shall also notify Acquisition Services within thirty (30) days whenever changes to company affiliations occur.

## **2.272 Governing Law**

The Contract shall 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 shall 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 the Contract shall be resolved in the State of Michigan. With respect to any claim between the parties, Contractor consents to venue in Ingham County, Michigan, and irrevocably waives any objections it may have to 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**

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

(a) The Contractor shall use, handle, store, dispose of, process, transport and transfer any material considered a Hazardous Material in accordance with all federal, State and local laws. The State shall provide a safe and suitable environment for performance of Contractor’s Work. Prior to the commencement of Work, the State shall advise Contractor of the presence at the work site of any Hazardous Material to the extent that the State is aware of such Hazardous Material. If the Contractor encounters material reasonably believed to be a Hazardous Material and which may present a substantial danger, the Contractor shall immediately stop all affected Work, give written notice to the State of the conditions encountered, and take appropriate health and safety precautions.

(b) Upon receipt of a written notice, the State will investigate the conditions. If (a) the material is a Hazardous Material that may present a substantial danger, and (b) the Hazardous Material was not brought to the site by the Contractor, or does not result in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Materials, the State shall order a suspension of Work in writing. The State shall proceed to have the Hazardous Material removed or rendered harmless. In the alternative, the State shall terminate the affected Work for the State's convenience.

(c) Once the Hazardous Material has been removed or rendered harmless by the State, the affected Work shall be resumed as directed in writing by the State. Any determination by the Michigan Department of Community Health and/or the Michigan Department of Environmental Quality (whichever is applicable) that the Hazardous Material has either been removed or rendered harmless shall be binding upon the State and Contractor for the purposes of resuming the Work. If any such incident with Hazardous Material results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in **Section 2.076** for a time as mutually agreed by the parties.

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

## 2.290 General

### **2.291 Amendments**

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

### **2.292 Assignment**

(a) Neither party shall have the right to assign the Contract, or to assign or delegate any of its duties or obligations under the Contract, to any other party (whether by operation of law or otherwise), without the prior written consent of the other party; provided, however, that the State may assign the Contract to any other State agency, department, division or department without the prior consent of Contractor and Contractor may assign the Contract to an affiliate so long as such affiliate is adequately capitalized and can provide adequate assurances that such affiliate can perform the Contract. Any purported assignment in violation of this Section shall 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 the 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 the Contract. In the event of any such permitted assignment, Contractor shall not be relieved of its responsibility to perform any duty imposed upon it herein, and the requirement under the Contract that all payments shall be made to one entity shall continue.

### **2.293 Entire Contract; Order of Precedence**

(a) The Contract, including any Statements of Work and Exhibits, to the extent not contrary to the Contract, each of which is incorporated for all purposes, constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior agreements, whether written or oral, with respect to such subject matter and as additional terms and conditions on the purchase order shall apply as limited by **Section 2.061**.

(b) In the event of any inconsistency between the terms of the 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 the Contract, which may be modified or amended only by a formal Contract amendment.

## 2.294 Headings

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

## 2.295 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 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. Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants and Subcontractors during the performance of the Contract.

## 2.296 Notices

(a) Any notice given to a party under the Contract 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.

State of Michigan  
Office of Acquisition Services  
Attention: Lisa Morrison  
PO Box 30026  
530 West Allegan  
Lansing, Michigan 48909

with a copy to:  
State of Michigan  
Department of Information Technology  
Attention: Melanie Ashley  
7285 Parsons Dr.  
Dimondale, Michigan 48821

Contractor(s):  
Name  
Address

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

### (b) Binding Commitments

Representatives of Contractor identified in **Exhibit I** shall have the authority to make binding commitments on Contractor's behalf within the bounds set forth in such table. Contractor may change such representatives from time to time upon written notice.

## 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 the Contract, the Services or the Contract without the prior written approval of the other party, and then only in accordance with explicit written instructions provided by that party. In addition, neither Contractor nor the State will use the name, trademarks or other proprietary identifying symbol of the other party or its affiliates without

such party's prior written consent. Prior written consent of the Contractor must be obtained from authorized representatives.

(b) **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.

**2.298 Reformation and 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.

**2.299 Consents and Approvals**

Except as expressly provided otherwise in the Contract, if either party requires the consent or approval of the other party for the taking of any action under the Contract, such consent or approval shall be in writing and shall 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 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.

**2.301 Survival**

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

**2.302 Covenant of Good Faith**

Each party agrees that, in its dealings with the other party or in connection with the Contract, it shall act reasonably and in good faith. Unless stated otherwise in the 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 the Contract.

**2.303 Permits**

Contractor shall obtain and pay any associated costs for all required governmental permits, licenses and approvals for the delivery, installation and performance of the Services. The State shall pay for all costs and expenses incurred in obtaining and maintaining any necessary easements or right of way.

**2.304 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.

**2.305 Taxes**

Vendors are expected to collect and pay all applicable federal, state, and local employment taxes, including the taxes defined in Section 3.022 for all persons involved in the resulting Contract.

The State may refuse to award a contract to any Vendor who has failed to pay any applicable State taxes. The State may refuse to accept Vendor's bid, if Vendor has any outstanding debt with the State. Prior to any award, the State will verify whether Vendor has any outstanding debt with the State.

## **2.306 Prevailing Wage**

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

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

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

## **2.307 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 shall 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 Vendor offering free assistance) to gain a leading edge on the competitive RFP.

*2.310 Reserved*

*2.320 Extended Purchasing*

## **2.321 Reserved - MiDEAL**

### **2.322 Reserved - State Employee Purchases**

*2.330 Federal Grant Requirements*

## **2.331 Federal Grant Requirements**

The following links contain certifications and terms which may be required for some purchases paid via Federal funds. They are included here to be utilized as required.

Lobbying Certifications are usually for agreements over \$100,000. The debarment certification is required for all agreements. The last link is where you can go and search for debarred or suspended contractors.

[http://straylight.law.cornell.edu/uscode/html/uscode31/usc\\_sec\\_31\\_00001352----000-.html](http://straylight.law.cornell.edu/uscode/html/uscode31/usc_sec_31_00001352----000-.html)

[http://www.archives.gov/federal\\_register/codification/executive\\_order/12549.html](http://www.archives.gov/federal_register/codification/executive_order/12549.html)

[http://www.archives.gov/federal\\_register/executive\\_orders/pdf/12869.pdf](http://www.archives.gov/federal_register/executive_orders/pdf/12869.pdf)

<http://www.epls.gov/epls/servlet/EPLSSearchMain/1>