

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

February 17, 2010

**CHANGE NOTICE NO. 3**  
**OF**  
**CONTRACT NO. 071B6200171**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF VENDOR  <b>West Publishing Corporation</b> <b>610 Opperman Drive</b> <b>Eagan, MN 55123</b>  Robert.wanamaker@thomsonreuters.com	TELEPHONE (313) 515-1980 <b>Bob Wanamaker</b>
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 335-6481 <b>Adam Koenigs knecht</b>
Contract Compliance Inspector: Miriam VanGoor (517) 636-4174 VangoorM@michigan.gov <b>Electronic and Print Legal Database Subscription and Michigan Tax Guides – Treasury</b>	
CONTRACT PERIOD: From: <b>March 1, 2006</b> To: <b>February 28, 2011</b>	
TERMS <p style="text-align: center;">N/A</p>	SHIPMENT <p style="text-align: center;">N/A</p>
F.O.B. <p style="text-align: center;">N/A</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	

**NATURE OF CHANGE:**

Effective March 1, 2010, this Contract is hereby EXTENDED through February 28, 2011, and INCREASED by \$74,330.00.

Article 1 is hereby amended to include State Surveys Service and Single Business Tax Guide volume at no additional cost. The annual price escalator is hereby eliminated.

The DMB Buyer for this Contract is changed to Adam Koenigs knecht (517) 335-6481.

All other terms, conditions, specifications, and pricing remain unchanged.

**AUTHORITY/REASON:**

Per agency request (PRF dated 12/28/2009), vendor proposal (e-mail dated 12/14/2009), Ad Board approval on 2/2/2010, and DMB/Purchasing Operations' approval.

REVISED CURRENT AUTHORIZED SPEND LIMIT: **\$339,458.00**

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

April 14, 2009

**CHANGE NOTICE NO. 2**  
**OF**  
**CONTRACT NO. 071B6200171**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF VENDOR  <b>West Publishing Corporation</b> <b>610 Opperman Drive</b> <b>Eagan, MN 55123</b>  Robert.wanamaker@thomsonreuters.com	TELEPHONE (313) 515-1980 <b>Bob Wanamaker</b>
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 373-8622 <b>Malynda Little</b>
Contract Compliance Inspector: Miriam VanGoor (517) 636-4174 VangoorM@michigan.gov <b>Electronic and Print Legal Database Subscription and Michigan Tax Guides – Treasury</b>	
CONTRACT PERIOD: From: <b>March 1, 2006</b> To: <b>February 28, 2010</b>	
TERMS <p style="text-align: center;">N/A</p>	SHIPMENT <p style="text-align: center;">N/A</p>
F.O.B. <p style="text-align: center;">N/A</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	

**NATURE OF CHANGE: Contract is hereby:**

Effective March 1, 2009, The State hereby exercises the 2<sup>nd</sup> of two Contract option years, revising the expiration date to February 28, 2010. Funds in the amount of \$75,420.00 are hereby added to the Contract. **NOTE:** The Contract Compliance Inspector is CHANGED to Miriam VanGoor (517) 636-4174.

All other terms, conditions, specifications, and pricing remain the same.

**AUTHORITY/REASON:**

Per agency request (PRF dated 12/17/08), Ad Board approval on 4/7/09, and DMB/Purchasing Operations' approval.

**REVISED CURRENT AUTHORIZED SPEND LIMIT: \$265,128.00**

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

March 24, 2009

**CHANGE NOTICE NO. 1 (REVISED)  
 OF  
 CONTRACT NO. 071B6200171  
 between  
 THE STATE OF MICHIGAN  
 and**

NAME & ADDRESS OF VENDOR  <b>West Publishing Corporation          610 Opperman Drive          Eagan, MN 55123</b>  Robert.wanamaker@thomsonreuters.com	TELEPHONE (313) 515-1980 <b>Bob Wanamaker</b>
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 373-8622 <b>Malynda Little</b>
Contract Compliance Inspector: Tom Falik (517) 373-8699 <a href="mailto:falikt@michigan.gov">falikt@michigan.gov</a> <b>Electronic and Print Legal Database Subscription and Michigan Tax Guides – Treasury</b>	
CONTRACT PERIOD: From: <b>March 1, 2006</b> To: <b>April 15, 2009</b>	
TERMS <p style="text-align: center;">N/A</p>	SHIPMENT <p style="text-align: center;">N/A</p>
F.O.B. <p style="text-align: center;">N/A</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	

**NATURE OF CHANGE: Contract is hereby:**

- (1) **EXTENDED** through April 15, 2009, to allow for review and approval of option to renew for additional fiscal year by the State Administrative Board;
  - (2) **Reassigned** to DMB Buyer, Malynda Little;
  - (3) **Reassigned** to Vendor’s Consultant and Account Manager, Bob Wanamaker;
- All other terms, conditions, specifications, and pricing remain the same.**

**AUTHORITY/REASON:**

Per agency request dated 1/12/2009 and DMB/Purchasing Operations’ approval dated 1/14/2009.

**CURRENT AUTHORIZED SPEND LIMIT REMAINS: \$189,708.00**

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

February 28, 2006

**NOTICE**  
**OF**  
**CONTRACT NO. 071B6200171**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF VENDOR  <b>West Publishing Corporation</b> <b>610 Opperman Drive</b> <b>Eagan, MN 55123</b>  ellen.gillespie@thomson.com	TELEPHONE (651) 687-5888 <b>Ellen Gillespie</b>
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 373-1080 <b>Melissa Castro, CPPB</b>
Contract Compliance Inspector: Miriam VanGoor <b>Legal Database Subscription &amp; Michigan Tax Guides – Department of Treasury</b>	
CONTRACT PERIOD: From: <b>March 1, 2006</b> To: <b>February 28, 2009</b>	
TERMS <p style="text-align: center;">N/A</p>	SHIPMENT <p style="text-align: center;">N/A</p>
F.O.B. <p style="text-align: center;">N/A</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	

**Estimated Contract Value:        \$189,708.00**

**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. 071B6200171  
 between  
 THE STATE OF MICHIGAN  
 and**

NAME & ADDRESS OF VENDOR  <b>West Publishing Corporation          610 Opperman Drive          Eagan, MN 55123</b>  <div style="text-align: right;">ellen.gillespie@thomson.com</div>	TELEPHONE (651) 687-5888 <b>Ellen Gillespie</b> VENDOR NUMBER/MAIL CODE  BUYER/CA (517) 373-1080 <b>Melissa Castro, CPPB</b>
Contract Compliance Inspector: Miriam VanGoor <b>Legal Database Subscription &amp; Michigan Tax Guides – Department of Treasury</b>	
CONTRACT PERIOD: From: <b>March 1, 2006</b> To: <b>February 28, 2009</b>	
TERMS <div style="text-align: center;"><b>N/A</b></div>	SHIPMENT <div style="text-align: center;"><b>N/A</b></div>
F.O.B. <div style="text-align: center;"><b>N/A</b></div>	SHIPPED FROM <div style="text-align: center;"><b>N/A</b></div>
MINIMUM DELIVERY REQUIREMENTS <div style="text-align: center;"><b>N/A</b></div>	
MISCELLANEOUS INFORMATION:          <b>Estimated Contract Value:        \$189,708.00</b>	

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<b>FOR THE VENDOR:</b>  <div style="text-align: center;"><b>West Publishing Corporation</b></div> <hr/> <div style="text-align: center;">Firm Name</div> <hr/> <div style="text-align: center;">Authorized Agent Signature</div> <hr/> <div style="text-align: center;">Authorized Agent (Print or Type)</div> <hr/> <div style="text-align: center;">Date</div>	<b>FOR THE STATE:</b>  <hr/> <div style="text-align: center;">Signature</div> <div style="text-align: center;"><b>Melissa Castro, CPPB, Buyer</b></div> <hr/> <div style="text-align: center;">Name</div> <div style="text-align: center;"><b>Services Division, Acquisition Services</b></div> <hr/> <div style="text-align: center;">Title</div> <hr/> <div style="text-align: center;">Date</div>
--	--



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

Legal Database Subscription Service and Publishing of Michigan Tax Guides

Buyer Name: Melissa Castro  
Telephone Number: 517-373-1080  
E-Mail Address: [castrom@michigan.gov](mailto:castrom@michigan.gov)



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**APPENDICES**

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- Appendix B - “Westlaw Subscriber Agreement”**
- Appendix C - “Software License Agreement”**



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

### 1.0 Project Identification

#### **1.001 PROJECT REQUEST**

The purpose of this Contract is to obtain a legal research database service and publisher of Michigan Tax Guides for the Department of Treasury, Bureau of Tax Policy.

#### **1.002 BACKGROUND**

The Department of Treasury must have an Internet-based legal database research subscription service that the Treasurer, Deputy Treasurers, policy staff in the executive office, attorneys working as hearing referees and the attorneys and analysts working in the Bureau of Tax Policy can use.

Hearing referees hold informal conferences and then make recommendations to the Treasurer's designee regarding disputed intents to assess and denial of refunds. Once an informal conference has been held the hearing referee must prepare a written recommendation applying the law, both statutory and case law, to the facts presented at the informal conference. The hearing referees would use the legal database service to research and access the statutes and case law to apply facts that are presented to them during their informal conferences. In 2004 the hearings division issued approximately 630 recommendations.

Other users would rely on this legal database to prepare legally sound Treasury policy. Departmental staff would also use this legal database subscription to research the statutes of other states when developing new legislation. This legal subscription must provide statutes that are annotated to contain references and links to court cases that construe the statutes. The service must accommodate up to thirty-five (35) users.

### 1.1 Scope of Work and Deliverables

#### **1.101 IN SCOPE**

The Contractor must provide Internet-based legal research subscription services to Treasury in accordance with the provisions, terms and conditions specified herein. The Contractor must structure and/or adapt the service to provide Treasury with Internet access to federal and state case law. The Contractor must provide training for Treasury users. The Contractor must provide hardcopies of Michigan Tax Guides.

#### **1.102 RESERVED**

#### **1.103 ENVIRONMENT**

The Internet-based legal research services must be compatible and operate at a minimum with Microsoft Office 97 components and higher, and the PC component must be capable of processing at a minimum on Windows NT, 95, 98, 2000, XP, and higher. Indicate minimum computer requirements needed to run database service.

Contractor's Internet-based legal research service must be compatible and operate with Microsoft Internet Explorer version 6.0 and higher.

Contractor Response to Task:

Access to westlaw.com requires the following:

Operating System:

- Windows XP, 2000, NT, ME, 98, or 95
- Mac OS 8.5 or later

Browser:

- Microsoft Internet Explorer 5.x or later
- Netscape 6.1 or later
- Safari 1.1 or later



- 640 x 480 or higher screen resolution
- 800 x 600 is recommended
- JavaScript enabled in the browser
- Cookies enabled in the browser

#### 1.104 WORK AND DELIVERABLE

Contractor shall provide Deliverables/Services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

The Contractor must provide a legal research database available via the Internet and it must contain the following:

1. **State Statutes** for all 50 states and District of Columbia containing: indexes, popular name table, table of contents feature, fill-in the blank citation formats. Statutes must contain an indication of pending legislation and historical versions of the statutes. Statutes must contain notes of court cases construing the statutes.

Additional specifications follows:

- a. Michigan tax-related statutes, as itemized in section 1.b of this document, must include title IX of the Michigan Constitution with annotated court cases from the following courts: US Supreme Court, Federal 6th Circuit Court of Appeals, both the Eastern and Western Federal District Court (Federal Supplement), Michigan Supreme Court, Michigan Court of Appeals, Michigan Tax Tribunal, and the Michigan Court of Claims. Each section of the Michigan compiled laws, including title IX of the Michigan constitution, must show the legislative history of the section and the contractor must provide cross-references to Michigan Department of Treasury Revenue Administrative Bulletins, Single Business Tax Questions and Answers, Letter Rulings and other Treasury official documents as determined by the Department.
- b. Contractor reserves the right to add new statutes where appropriate during the term of Contract.
- c. Contractor must also provide hard copy sets in addition to the Internet subscription of Michigan tax-related statutes that includes the following (quarterly updates must be provided in hard copy format for each set):
  1. Title IX of Constitution of the State of Michigan
  2. Beverage Containers Act, Initiated Law 1976, as amended 1996 PA 384, Unclaimed Bottle Deposits, MCL 445.571 et seq
  3. General Property Tax Act, 1893 PA 206, MCL 211.7cc et seq, Real Estate Exemptions
  4. Income Tax Act, 1967 PA 281, MCL 206.1 et seq
  5. Sales Tax Act, 1933 PA 167, MCL 205.51 et seq
  6. Use Tax Act, 1937 PA 94, MCL 205.91 et seq
  7. State Convention Facility Development Act, 1985 PA 106, MCL 207.621 et seq
  8. Stadia or Convention Facility Financing, 1991 PA 180, MCL 207.751 et seq
  9. Streamlined Sales and Use Tax Revenue Equalization Act, 2004 PA 175, MCL 205.171 et seq
  10. Airport Parking Tax, 1987 PA 248, MCL 207.371 et seq
  11. Universities and Colleges – 2000 PA 161, Michigan Education Savings Program, MCL 390.1471, et seq
  12. Collection of Motor Fuel Taxes, 1959 PA 15, MCL 205.41 et seq
  13. Motor Fuel Tax Act, 2000 PA 403, MCL 207.1001 et seq  
Natural Resources and Environmental Protection Act, 1994 PA 451 MCL 324.21501 et seq
  14. Revenue Administrative Bulletins
  15. Forms and Instructions
  16. Motor Carrier Fuel Tax Act, 1980 PA 119, MCL 207.211
  17. Single Business Tax Act
  18. Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.36101 et seq (Farmland and Open Space Preservation)
  19. Michigan Estate Tax
  20. Severance Tax on Oil or Gas
  21. Tobacco Products Tax Act
  22. Domicile of Decedents for Death Tax Purposes
  23. Multistate Tax Compact



24. Tax Tribunal Act
25. Collection of Specific Taxes
26. Revenue Act
27. Statutes must be followed by court opinion.

Contractor Response to Task:

Westlaw has annotated (notes of court cases) statutes for all 50 states, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands. West will provide access to this content under this proposed contract. Statute databases without annotations are also available.

This content includes indexes, popular name table, table of contents feature, fill-in the blank citation formats. Statutes also contain an indication of pending legislation and historical versions of the statutes are also available through the power of KeyCite. For more information on KeyCite, please see item 9 Citator Service, below.

West is offering the *Michigan Tax Guide*. Published in cooperation with the Michigan Department of Treasury, the Michigan Tax Guide is the only official guide to Michigan taxation. This exhaustive resource provides all the essential information needed by anyone involved with Michigan tax law and practice. It contains easy to use coverage of Michigan tax law including Michigan tax statutes, state tax regulations, current state revenue administrative bulletins and letter rulings, state tax forms and instructions, and a comprehensive index. The annotated Michigan tax statutes in these volumes provide references to cases, administrative documents, and related publications.

The Michigan Tax Guide meets all of the specifications as required.

2. **State case law** for all 50 states and the District of Columbia organized by topic number allowing users to quickly locate and identify cases with the same or similar legal concepts and principals in any jurisdiction.

Contractor Response to Task:

Westlaw has, and will provide access to, complete case law coverage for all state court opinions published in West's National Reporter System<sup>®</sup>. Westlaw also contains many unpublished state appellate court opinions and selected state trial court opinions.

Caselaw on Westlaw is organized by topic number. The West Key Number System is the master classification system of U.S. law and is widely regarded as the cornerstone of effective legal research. It helps users to quickly identify and locate cases with the same or similar legal concepts and principals in any jurisdiction in the U.S. It gives users several advantages over full-text searching, which relies solely on vocabulary, including the following:

- Search across jurisdictions without worrying about differences in terminology (e.g., one state uses divorce and another uses dissolution).
- Retrieve relevant cases even when the search uses terms that are common or terms that have multiple meanings (e.g., interest).
- Retrieve relevant cases without having to guess the exact words used in the opinion.

The following exclusive West features are built upon the strength of the West Key Number System:

- **KeySearch.** KeySearch consists of an outline of legal topics that allows users to browse through progressively detailed levels of the Key Number System hierarchy to help them create queries that retrieve on-point documents.
- **Custom Digest.** The Custom Digest provides users with an outline of the West Key Number System from which they can locate the key number(s) they are interested in. The Custom Digest then retrieves the headnotes for cases in the chosen jurisdiction and timeframe.
- **Most Cited Cases.** The Most Cited Cases feature helps users find relevant cases and identify the seminal cases for the selected proposition. Cases are ranked from the most cited to least cited for a particular point of law, which takes out the guesswork in finding the most relevant cases.



3. **State administrative materials** for all 50 states containing: administrative rules, attorney general opinions, and official policy bulletins.

Contractor Response to Task:

Westlaw has the administrative codes for all 50 states and the District of Columbia; no other online information resource provides this level of coverage. Other administrative materials include attorney general opinions, workers' compensation decisions, and insurance and environmental regulations

4. **Federal statutes** containing: the United States Constitution, indexes, popular name table, table of contents feature, fill-in the blank citation formats. Federal statutes must contain an indication of pending legislation and historical versions of the statutes. Statutes must contain notes of court cases construing the statutes.

Contractor Response to Task:

Westlaw has complete coverage of current federal statutes and archival statutes back to 1990. West's federal statutes databases include the following:

- **United States Code Annotated**, which contains annotations to the United States Code, as well as court rules, appendices, and the Popular Name Table. In addition, provisions from public laws classified as notes in the USC database can be found under the corresponding section of the USCA.
- **United States Code**, which contains the text of the federal statutes without annotations.
- **Legislative History**, which contains legislative history information (1948–present) for congressional bills and public laws and signing statements issued when the President signs a bill into law.
- **U.S. Public Laws**, which contains laws passed by Congress.

Federal Statutes on Westlaw have indications, through the power of KeyCite, of pending legislation. KeyCite makes it easy to determine the current status of a statute. KeyCite status flags—such as the red or yellow flag—inform users when a statute is affected by case law or legislative action. KeyCite also allows users to expand their research by directing them to additional authority. For more information on KeyCite, please see West's response to item 9 Citator Service, below.

Access to the US Constitution is included.

5. **Federal case law** containing: U. S. Supreme Court, circuit courts of appeal, district courts and tax courts. Cases must be organized by topic number allowing users to quickly locate and identify cases with the same or similar legal concepts and principals in any jurisdiction.

Contractor Response to Task:

Westlaw has complete coverage of all published federal case law, as well as many unpublished opinions. Cases appear as officially published and contain West's editorial enhancements. Examples of West's federal case law databases include the following:

- U.S. Supreme Court cases
- U.S. Court of Appeals cases
- U.S. District Court cases
- Tax Court cases
- Bankruptcy Court cases

Cases are organized by topic number (see discussion on West's Key Number System above in item 2) allowing users to quickly locate and identify cases with the same or similar legal concepts and principals in any jurisdiction.



6. **Code of Federal Regulations** containing: indexes and a table of contents feature.

Contractor Response to Task:

Westlaw provides extensive coverage of federal administrative rules and regulations, including the following:

- Code of Federal Regulations, which contains documents from all 50 titles comprising the Code of Federal Regulations and incorporates recent changes that appear in the Federal Register. Indexes and a table of contents feature is also available for the CFR.
- Federal Register, which contains documents from the Federal Register.

Other administrative and executive materials include comptroller general decisions, U.S. attorney general opinions, and presidential documents. Westlaw also has a vast selection of federal agency-specific administrative materials.

7. **Legal Texts and Periodicals** Documents from law reviews, legal texts, Continuing Legal Education course materials, bar journals, legal practice-oriented periodicals, American Law Reports, and American Jurisprudence 2d.

Contractor Response to Task:

Westlaw provides access to American Law Reports, American Jurisprudence 2d, and more than 1,100 of the most respected law reviews, law journals, bar journals, CLE course materials, and other professional legal publications. Full-text coverage extends back to the early 1980s for the top law reviews and journals. The Harvard Law Review, for example, contains full coverage of all content back to 1949.

8. **Specialty tax-related databases** containing: multi-state taxation cases and administrative materials, Michigan Tax Guide, Warren Gorham and Lamont combined tax treatises, and Hellerstein and Hellerstein State Taxation

Contractor Response to Task:

Westlaw contains many tax-related databases, including multi-state and federal taxation cases, Internal Revenue Code, tax administrative materials and regulations, Michigan Tax Guide, Warren Gorham and Lamont combined tax treatises, and Hellerstein and Hellerstein State Taxation.

9. **Citor service:** A tool that helps users determine whether a case is good law by tracing the history of a case, statute, or federal administrative decision. The citator service also links to all citing references, which include cases, statutes, administrative materials, and secondary sources.

Contractor Response to Task:

KeyCite is West's online citation research service. It is a full-service citator that helps users determine whether a case is good law by tracing the history of a case, statute, administrative decision, or regulation. KeyCite also retrieves all citing references, which include cases, statutes, pending legislation, administrative materials, and secondary sources.

KeyCite is also a case and statute finder. KeyCite integrates West's editorially enhanced case law, the full text of headnotes, notes of decision, and topic and key numbers to provide maximum case-finding power. Search results can be limited using the topic and key number, the master classification system of U.S. law.

- **KeyCite is accurate.** All cases added to KeyCite undergo rigorous editorial analysis by West editors. These experienced attorney-editors analyze all case history and negative references and describe the direct history in terms used by the citing court in its opinions—not arcane editorial codes.
- **KeyCite is comprehensive.** It contains references to more publications than any other citator, including complete coverage of West's National Reporter System and exclusive coverage of more than 1 million unpublished cases. KeyCite also provides more citing references, including references to more than 1,100 law reviews, thousands of ALR annotations and AmJur 2d articles, USCA, Code of Federal Regulations, statutes from all 50 states, select administrative decisions, state jurisprudence encyclopedias, patents issued by the U.S. Patent and Trademark Office, and numerous treatises. In fact, KeyCite has more than two times as many citing references overall and averages more than two times as many citing references per document as the nearest competitor.
- **KeyCite is current.** KeyCite is as current as Westlaw itself—the same day a case appears on Westlaw, it is represented in KeyCite. For example, direct history, which traces a case through the appellate process and includes prior and subsequent history, is added to KeyCite within 1–4 hours of receipt of the opinion at West.



- Severe negative history, such as overrulings, is identified on KeyCite by attorney-editors within 24 hours of receipt, and negative indirect references are added within a few days. Citing references are available in KeyCite when a case or statute is added to Westlaw.
- **KeyCite is easy to use.** KeyCite uses visual elements to help users quickly identify and evaluate information.
  - **Status Flags.** KeyCite uses status flags to indicate whether a case has negative history and how serious the negative history is. Status flags are also used to indicate whether a statute has been amended or repealed or whether it might be affected by pending legislation.
  - **Depth of Treatment.** KeyCite uses depth of treatment stars to reveal how much one case discusses another. More stars equals more discussion
  - **Quotation Marks.** KeyCite uses quotation marks to show where one case quotes another. Users can jump to the quoted text within the citing reference.

### Full Case History and Status

In additions to the Direct Case History information available via KeyCite, KeyCite also provides negative citing references; thus, cases outside the direct appellate line that may have a negative impact on the precedential value of a case are listed. Court documents associated with the litigation, such as briefs & pleadings, are listed in the KeyCite result. Related references are also provided to make researchers aware of cases involving the same parties and facts as the cited case, whether or not the legal issues are the same. KeyCite allows users to specify whether they want to view the full history or just the negative history.

### Citing References

KeyCite contains references to more publications than any other citator, with more than 3,100 different analytical materials being fully incorporated with linking functionality. KeyCite includes complete coverage of West's National Reporter System and exclusive coverage of more than 1 million unpublished cases. KeyCite also provides more citing references, including references to more than 1,100 law reviews, thousands of ALR annotations and Am Jur 2d articles, USCA, Code of Federal Regulations, statutes from all 50 states, select administrative decisions, state jurisprudence encyclopedias, patents issued by the U.S. Patent and Trademark Office, briefs, and numerous treatises. In fact, KeyCite has more than two times as many citing references overall and averages more than two times as many citing references per document as the nearest competitor.

Not only does KeyCite provide more citing references than the competition, it also provides users with a broader scope of information as well. Cases (including unpublished opinions), administrative materials, and secondary sources on Westlaw that cite a case being viewed are accessible by clicking Citing References in the Links tab.

### Focusing Citing References to a Specific Point of Law

Every legal issue in a case published by West is identified and summarized in a headnote. Each headnote is classified under one or more topic and key numbers in the West Key Number System. Each topic and key number represents a particular point of law. Users can restrict the list of citing references to those discussing points of law dealt with in specific headnotes by using the Limit KeyCite Display tool. Users can also limit the display by locate (i.e., limiting the display to documents that contain specific terms), jurisdiction, date, document type, or depth of treatment.

### Linking to Citing References

KeyCite provides rich linking capability to facilitate easy access between KeyCite and relevant source materials. For example, from the list of Citing References, users can click the number preceding the listed case and be linked to the full text of that case on Westlaw. Clicking a quotation mark takes users directly to the place in the citing document where the cited case is quoted.

Document-by-document linking is available for materials included in KeyCite, resulting in easy document navigation. For example, to further research secondary sources related to the case *Bieregu v. Reno*, 59 F.3d 1445, click on Citing References on the Links tab and then scroll down to "Secondary Sources". Click on the number preceding the relevant source material referenced by KeyCite to link to that source, e.g., click on number to link to 15 Am. Jur. 2d Civil Rights s 98.

### KeyCite Information for Statutes

KeyCite makes it easy to determine the current status of a statute. KeyCite status flags—such as the red or yellow flag—inform users when a statute is affected by case law or legislative action. KeyCite also allows users to expand their research by directing them to additional authority.

Statute history lists cases affecting the validity of a statutory section plus legislation affecting the section. Legislative information is divided into the following categories:



- Updating Documents—session laws that amend or repeal a section.
- Pending Legislation—pending bills that cite the section.
- Credits—citations to session laws, in chronological order, that have enacted, amended, or renumbered a section.
- Historical and Statutory Notes—describes the legislative changes affecting a section.

### KeyCite Coverage

KeyCite information is available for federal and state cases, including every case in West's National Reporter System as well as more than 1 million unpublished cases; federal statutes and regulations; state statutes from all 50 states; regulations and administrative decisions from selected states; patents issued by the U.S. Patent and Trademark Office; American Law Reports (ALR) annotations; articles from more than 1,100 law reviews; and administrative decisions of selected federal agencies.

10. **Citator Notification Service:** A tool that helps users stay current on their research by monitoring the status of cases, statutes, the Code of Federal Regulations, and federal agency decisions. Once the user has set up the citation that he/she wants to track, the citator service automatically sends notices via e-mail when the information changes.

#### Contractor Response to Task:

KeyCite Alert helps users stay current on their research by monitoring the status of KeyCite information for cases, statutes, patents, administrative decisions, regulations, and law reviews. KeyCite Alert automatically sends notices when the information in KeyCite changes. Users can specify how often they want KeyCite Alert to check for new information (e.g., daily, weekly, monthly), as well as how the updates are to be delivered (e.g., e-mail, fax, wireless device).

11. **Search Engine:** The legal research database service must have the ability to search a variety of methods including terms and connectors (Boolean), key word, natural language, etc. The user must be able to search several databases with one search phrase. The database must allow for the modification of a search and have a search within results feature. The user must also be able to search case law by title when the user knows one or more of the parties' names. The response time for search results, designated as the time the "enter" key or its equivalent is depressed until the requested information appears on the screen, must be ten (10) seconds or less.

#### Contractor Response to Task:

Westlaw provides users with several ways to find the information they are looking for, including the following:

- **Natural Language Searching**—enter a search query using plain English
- **Terms and Connectors (Boolean language) Searching**—enter a search query using proximity and/or grammatical connectors, root expanders, and field restrictions
- **KeySearch**—build expertly formulated queries with the help of West's exclusive Key Number System
- **Multibase Searching**—search many related databases at one time
- **Field Searching**—limit a search to any portion or field of a document's natural structure
- **Template Searching**—use one of more than 9,000 publication-specific, fill-in-the-blank templates to find documents

In addition to the search methods described above, Westlaw provides exclusive access to Smart Tools. Smart Tools can help improve search results by suggesting alternative spellings and synonyms, suggesting a broader database search when a search result contains five or fewer documents, and detecting a variety of mistakes in a query.

westlaw.com is capable of allowing users to quickly and easily modify their searches as well as have a search within the results. Users can move forward and backward through a document to the instances where the search terms are located. In addition, users can use the Users can move forward and backward through a document to the instances where the search terms are located. In addition, users can use the "Locate" function to further narrow their research. "Locate" allows users to perform a separate search within their original search results. Once users have input their Locate command, users can navigate through their documents locating instances of their "Locate" results.

Users are able to search case law by title when the user knows one or more of the parties' names.

West takes system response time very seriously and Westlaw response times are consistently superior to those of our competitors. Even so, West continually strives to improve response times. For example, our benchmark tests revealed that the average time it takes to process a Find request on westlaw.com improved by 33% with the October 2000 release.



In addition, a response-time improvement of 10–25% for all westlaw.com processes was achieved with the April 2001 release.

Actual response time is dependant on numerous factors – such as, for example, the complexity of the query or the number of databases being searched at one time. These are factors within West’s control and it is not unreasonable to expect a very quick response from the time the “enter” key or its equivalent is depressed until the requested information appears on the screen.

However, there are many factors out of West’s control which also directly affect response time, such as the user’s connection to the internet (dial-up vs. other high-speed services as well as the traffic handling of the particular Internet Service Provider) or the user’s computer’s processing speed. Therefore, West can not guarantee a response time of 10 seconds or less.

**12. Archive Legal Research Session Trails:** The contractor’s database must allow users to archive searches for two weeks, so that the user can return to a prior research session. The trail must show the search terms and the database or databases searched, and the documents viewed.

Contractor Response to Task:

The Research Trail lists all of the queries and research steps for the current and previous research sessions, which enables users to easily track or revisit a previous step in a research session. Users can also add personal notes about a particular task or session in their research trail.

The “Trails” feature on Westlaw archives a user’s searches for a minimum of two weeks. Additionally, users can chose to save a particular “Trail” for a longer period of time or to download the Trail from permanent storage on their PC.

### **Support/Training**

13. The Internet-based legal research database must include on-line and toll-free telephone help. The help support service must include customer and technical support as well as reference attorneys to assist users.

Contractor Response to Task:

West provides world-class technical support and trustworthy research assistance. West Technical Support Representatives and Reference Attorneys are available 24 hours a day, 7 days a week, 365 days a year at no additional charge.

- Technical Support—1.800.WESTLAW (1.800.937.8529) or [west.support@thomson.com](mailto:west.support@thomson.com)
- Research Support—1.800.REFATTY (1.800.733.2889) or [west.referenceattorneys@thomson.com](mailto:west.referenceattorneys@thomson.com)
- Online Support—<http://www.westlaw.com/customersupport/>

### **Technical Assistance**

West provides world-class technical assistance through a team of highly trained professionals dedicated to quality customer support, customer advocacy, and product improvement. West technical support experts

- answer questions
- document comments/suggestions
- process requests for passwords, software, supplies, and documentation
- provide other technical or administrative information regarding Westlaw

Technical support representatives possess outstanding communication skills, experience in customer support, professional experience working via the telephone, and a high level of technical/computer knowledge. They are technical experts who receive extensive on-going training, and who are capable of supporting West products in a variety of hardware, network, and software environments.

West technical support representatives effectively handle more than 5,000 calls from West customers each day, and more than 1.2 million calls every year. They are available 24 hours a day, 7 days a week, and can be reached by calling 1.800.WESTLAW (1.800.937.8529) or via e-mail at [west.support@thomson.com](mailto:west.support@thomson.com).



### Research Assistance

An additional level of support for West customers is provided by West Reference Attorneys. As expert information brokers, Reference Attorneys assist with legal research, database selection, and Westlaw query formulation.

The West Reference Attorneys department is staffed with 135 bar-admitted attorneys who are Westlaw and legal research experts. These attorneys are capable of supporting West products in a wide variety of research and subject-matter environments. They receive extensive on-going training to ensure that they stay current with the vast and ever-growing scope of information on Westlaw, as well as stay current with trends in the law.

Reference Attorneys enhance customers' use of West products and services by providing quick and knowledgeable guidance. Many of the Reference Attorneys have legal practice experience, which greatly enhances their ability to assist customers.

West Reference Attorneys are available 24 hours a day, 7 days a week, and can be reached by calling 1.800.REF-ATTY (1.800.733.2889) or via e-mail at [west.referenceattorneys@thomson.com](mailto:west.referenceattorneys@thomson.com). This added level of support is a free service provided by West to its customers. No other computer-assisted legal research provider can match West's level of research support.

14. The Contractor must provide all training and materials necessary to operate the Internet-based service. Identify the number of training sessions Contractor will provide at no cost. Contractor must provide training at no cost when systems are modified.

#### Contractor Response to Task:

West provides free Westlaw training. West Government Account Managers work directly with designated contacts at each agency to implement appropriate plans and schedules to meet the training needs of each agency.

- Telephone Training—Personalized, telephone training is available by calling 1.800.328.0109 (available 7:00 a.m. to 7:00 p.m. CST, Monday–Friday).
- On-Site Training—West can provide individualized one-on-one or small-group training directly in agency offices.

Westlaw training is available for users of all skill levels and can be the difference between ordinary research and winning research.

West is not limiting the amount of on-site training that will be provided for the Department of Treasury. West's dedicated Account Manager will work with the Department's contact to set-up any desired on-site training for groups of Department users. As with all West training options (e.g., web-based training, telephonic training), on-site training will be provided at no charge.

15. If requested, the Contractor's training must be provided on-site at a location provided by Treasury.

#### Contractor Response to Task:

West will provide, upon request, training on-site at a location provided by the Treasury.

16. The Contractor must provide an internet-based instruction manual and should provide an on-line tutorial.

#### Contractor Response to Task:

In addition to the help available from the Customer Support and Reference Attorney staff, West also provides online assistance resources.

- **Online Help Screens.** West products include online help information that provides a description of and immediate assistance with the specific products. For example, help pages in [westlaw.com](http://westlaw.com) are accessible by clicking the Help link on the appropriate [westlaw.com](http://westlaw.com) screen.
- **Customer Support Online.** Subscribers can obtain fast, up-to-date, in-depth, searchable answers to their questions at [west.thomson.com/support/westlaw/research.asp](http://west.thomson.com/support/westlaw/research.asp). They can also reach technical support representatives and the West Reference Attorneys via e-mail at [west.support@thomson.com](mailto:west.support@thomson.com).



- **Online Store.** Through the West Store ([west.thomson.com/store/](http://west.thomson.com/store/)) customers can order free Westlaw documentation and brochures. (Many of the documentation pieces are available in PDF format for immediate download.) Customers can also use the store to view current promotions and to locate a West sales representative.

West also provides web-based training. Users can learn more about Westlaw with a series of short, interactive, web-based lessons. These sessions are designed to show users how to get started with Westlaw, conduct research using the four basic Westlaw search techniques, use KeyCite to verify their citations and expand their research, and print and save their results. Each lesson is free and takes 5–10 minutes to complete. Web-based training is available at [west.thomson.com/westlaw/training/online/](http://west.thomson.com/westlaw/training/online/).

17. The on-line tax research databases as described herein must be accessible by user twenty-four (24) hours a day, seven (7) days a week, including holidays.

**Contractor Response to Task:**

West, which is home to one of the largest data centers in the Midwest, takes every precaution to guarantee the safety of computer equipment and data. To ensure uninterrupted Westlaw service, West operates two separate, redundant data centers. Each of these data centers, which provide a geographically dispersed network of computers, has enough capacity to handle a site outage for the majority of our users. In addition, West maintains a separate electrical power grid that ensures an uninterrupted power supply for West systems and facilities in the event that public utility power to the facility is lost. These precautions ensure that West leads the industry in system reliability.

West's expertly trained staff helps ensure that uninterrupted Westlaw and westlaw.com service is provided 24 hours a day, 7 days a week, 365 days a year. In contrast, other computer-assisted legal research providers shut down their systems regularly (e.g., nightly, weekly) for maintenance and updating.

18. The Contractor must e-mail notices to users at least twenty-four (24) hours in advance of any scheduled downtime of the on-line legal research database.

**Contractor Response to Task:**

Because West operates two separate, redundant data centers, there is no scheduled downtime. Maintenance is done on the two centers separately, ensuring that Westlaw is always on.

19. All system outages/shutdowns must be reported immediately to the Contract Compliance Inspector or designee. Within twenty-four (24) hours of problem resolution and restart, the Contractor must prepare and submit a report to the Contract Compliance Inspector or designee indicating elapsed downtime hours, start/end timeframes, reason for the outage, impact on the systems (lost data, etc.) for each occurrence and resolution to mitigate future occurrences.

**Contractor Response to Task:**

In the unlikely event of system outage/shutdown, the designated (see below in Item 1.201) Account Manager will work with the agency to provide any necessary reporting. Additionally, notice and status of any such system outage/shutdown, will be made through the user's call to West's Technical Support hotline.

20. The Contractor's internet-based services must include provisions for warning screens that shall notify the user when they are entering into a database area, which is not a part of the subscription package, the user is warned that if the non-subscription database is accessed there will be an additional charge (see section 1.103).

**Contractor Response to Task:**

Westlaw provides warning screens notifying users they are entering into a database, feature or service which is not a part of the subscription package. The user is warned that if the non-subscription database is accessed there will be an additional charge



1.2 *Roles and Responsibilities*

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

1. Contract and Operations Manager/Liaison to serve as central point-of-contact for this Contract.
2. Trainer per section 1.104.12.
3. Bidder must identify any additional roles and responsible personnel critical to their proposal.

Contractor Response to Task:

Westlaw Government Account Management will be responsible for the day-to-day account management of any contract awarded to West pursuant to this ITB. The Westlaw Regional Manager will be responsible for supervising all training and technical support staff. A designated Westlaw Government Account Manager will work closely with personnel from the Michigan Department of Treasury, Bureau of Tax Policy to provide consultation, training, and technical support involving any and all aspects of the Westlaw service. West Technical Consultants will serve as the primary field representatives to the Department for purposes of providing on-site technical support. The designated contact persons for account management, training, and technical issues will be:

George Vittori  
Westlaw Regional Field Manager

Dana Marquez  
Westlaw Government Account Manager

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

1. Contract Compliance Inspector per section 2.015.

**1.203 RESERVED**

1.3 *Reserved*

**1.302 RESERVED**

1.4 *Project Management*

**1.401 ISSUE MANAGEMENT**

Describe how issues will be addressed when they arise and how appropriate parties will be apprised of progress.

Contractor Response to Task:

For general research or technical assistance, users will call the appropriate hotlines for support. Please see Item 13 above.

For all other issues that may arise, the agency's contact will be the designated Government Account Manager. The Account Manager will work with the agency to identify the issue, the cause, the appropriate solution and timeline, and the necessary Westlaw professionals to work with in resolving the issue. The Account Manager will stay in contact with the agency to provide updates on the issue resolution



### 1.402 RISK MANAGEMENT

Risk management generally involves (1) identification of the risk, (2) assigning a level of priority based on the probability of occurrence and impact to the project, (3) definition of mitigation strategies, and (4) monitoring of risk and mitigation strategy. Risk assessment review should be conducted on a regular basis. Please describe bidder's risk management process.

#### Contractor Response to Task:

To ensure uninterrupted Westlaw service, West operates two separate, redundant data centers. These data centers provide a geographically dispersed network of computers. Each data center has enough capacity to handle a complete site outage. In addition, West maintains a separate electrical power grid that ensures an uninterrupted power supply for West systems and facilities in the event that public utility power to the facility is lost. These precautions ensure that West leads the industry in system reliability.

West takes system availability very seriously. If our service isn't up and running, our customers research can't be done. To help ensure that Westlaw is available around the clock, West operates two redundant data centers totaling 120,000 square feet (more than two acres), one of which is bunkered at ground level for extra protection. Some of the measures taken to further ensure Westlaw availability include the following:

- Flood protection that includes a six-foot moat beneath the raised floors and externally routed plumbing.
- Fire protection that includes automatic heat and smoke detection and fire suppression above and below the raised floor, with 24/7 surveillance monitoring.
- Power-loss protection that includes redundant power feeds from separate utility switches, emergency battery systems that come online in the event of a brownout or power loss, and 10 electrical diesel generators—enough to power 17,000 homes—that can power the data centers indefinitely.
- Data-loss protection that includes backing up critical data at each data center every 24 hours and creating a duplicate copy that is stored in a remote vault.

West respects the privacy and security of its users and is committed to fair information practices. Information about Westlaw subscribers and their Westlaw usage is maintained in a secure environment and this information is not shared with third parties for marketing purposes. West does not disclose any information about any subscriber's usage of Westlaw, except to enforce the terms of our subscriber agreements or as required by law.

With westlaw.com, the transmission of passwords is always encrypted with SSL. This ensures that the Westlaw password is protected during transmission. Additionally, SSL encryption of an entire Westlaw session is available to users that elect this option at sign-on. The use of SSL technology for an entire session ensures that all transmissions (including queries and responses) are protected to and from West and the user's workstation, maintaining confidentiality. **Virus Protection** - West employs the use of the latest virus checking technology that constantly monitors West's systems (including CALR services, West's internal business systems and e-mail). These anti-virus applications continuously scan for viruses throughout the day to ensure any electronically transmitted data received by or from West through its host client applications, (Westlaw or WestCheck), internal business systems (billing or reporting data received electronically), or any e-mails received from West are virus free.

Data placed in the Westlaw databases is virus-checked and subjected to extensive internal review and verification before it is made available to users. The verification process consists of running automated searches and manually reviewing this information. These procedures verify that viewing or downloading Westlaw data consists only of text and not any executable code that may corrupt a user's system.

Please also see West's response to Item 17, above.

### 1.403 CHANGE MANAGEMENT

If a proposed contract change is approved by the Contract Compliance Inspector, the Contract Compliance Inspector will submit a Contract Change Request to the Department of Treasury, Purchasing Division, and it will be forwarded to the Department of Management and Budget, Acquisition Services Buyer, who will make recommendations to the Director of Acquisition Services regarding ultimate approval/disapproval of change request. If the DMB Acquisition Services Director agrees with the proposed modification, and all required approvals are obtained (including State Administrative Board),



the Acquisition Services Buyer will issue an addendum to the Contract, via a Contract Change Notice. **Vendors who provide products or services prior to the issuance of a Contract Change Notice by the DMB Office of Acquisition Services, risk non-payment for the out-of-scope/pricing products and/or services.**

1.5 Acceptance

**1.501 CRITERIA**

See sections 1.104.9 and 15 for the criteria used by the State to determine Acceptance of the Services and/or Deliverables provided under this SOW.

**1.502 FINAL ACCEPTANCE**

Final acceptance is tied to adequate performance of required services per section 1.501.

1.6 Compensation and Payment

**1.601 COMPENSATION AND PAYMENT**

This is a firm, fixed price Contract. For detailed pricing, see Article 1, Attachment A

1.7 Additional Terms and Conditions Specific to this SOW

**1.701 RESERVED**



**Article 1, Attachment A**  
Pricing

Article 1, Attachment A (v1.2 to include hard copy materials)						
Pricing						
	Cost per User/Set		Quantity		Years	Total
<b>1) Annual Legal Database Subscription (Internet Access)</b>						
a) 0-5 Users	\$ see below	x	5	x	3	\$ see below
b) 6-10 Users	\$ see below	x	10	x	3	\$ see below
c) 11-15 Users	\$ see below	x	15	x	3	\$ see below
d) 16-20 Users	\$ see below	x	20	x	3	\$ see below
e) 21-25 Users	\$See West's Pricing Detail	x	25	x	3	\$133,608*
f) 26-30 Users	\$ See West's Pricing Detail	x	30	x	3	\$133,608*
g) 31-35 Users	\$ See West's Pricing Detail	x	35	x	3	\$133,608*
<b>2) Michigan Tax-related Statutes (Hard Copy)</b>						
Price per complete set	\$374	x	50	x	3	\$33,600
<b>** Pricing must be all inclusive</b>						
<b>**</b>						



### Pricing Detail

West Publishing Corporation (West, a Thomson business, hereinafter "West") proposes to provide Computer Assisted Legal Research (CALR) Services to the **Michigan Department of Treasury, Bureau of Tax Policy** (hereinafter 'agency'). The pricing proposal is as follows:

#### WESTLAW

**Proposed Content:** Westlaw, NewsRoom on Westlaw, RIA Library on Westlaw, WGL Library on Westlaw, ALR on Westlaw, AMJUR database on Westlaw.

(Please see page 3 for a summary of included/excluded databases, features, and services.)

**User/Usage Limit:** Up to 35 Authorized Agency Users / Unlimited Simultaneous Usage

<b>Fixed Monthly Charge:</b> \$3,638* per month	<b>Year One:</b>	<b>March 1, 2006, through February 28, 2007</b>
\$3,711* per month	<b>Year Two:</b>	<b>March 1, 2007, through February 29, 2008</b>
\$3,785* per month	<b>Year Three:</b>	<b>March 1, 2008, through February 28, 2009</b>

\*In addition to this fixed rate, West is also offering a monthly \$200 credit off of usage of "Specialty" databases (e.g., state public utilities reports and bill tracking) on Westlaw.

In addition, if the agency purchases both the Westlaw and the Michigan Tax Guide, West will include the following at no additional charge:

#### **All AmJur Library on Westlaw**

- American Jurisprudence (AMJUR)
- American Jurisprudence Trials-Personal Injury Damages (DMG-TRIALS)
- American Jurisprudence-All (AMJUR-ALL)
- Major Litigation Treatises and Legal Forms (MAJLTG-TLF)
- American Jurisprudence Legal Forms 2D (AMJUR-LF)
- Causes of Action-Medical Malpractice (MM-COA)
- American Jurisprudence Legal Forms 2D TOC (AMJUR-LF-TOC)
- American Jurisprudence Proof of Facts (AMJUR-POF)
- American Jurisprudence Proof of Facts & Trials Combination (AMJUR-POFTR)
- American Jurisprudence Pleading and Practice (AMJUR-PP)
- American Jurisprudence Pleading and Practice Forms-Medical Malpractice (MM-PP)
- American Jurisprudence Pleading and Practice TOC (AMJUR-PP-TOC)
- American Jurisprudence Trials-Medical Malpractice (MM-TRIALS)
- American Jurisprudence Legal Forms 2D-Federal Tax Guide to Legal Forms (AMJUR-TGLF)
- Causes of Action-Motor Vehicle Accidents (MV-COA)
- American Jurisprudence Legal Forms 2D-Federal Tax Guide to Legal Forms TOC (AMJUR-TGLF-TOC)
- American Jurisprudence Proof of Facts-Motor Vehicle Accidents (MV-POF)
- American Jurisprudence TOC (AMJUR-TOC)
- American Jurisprudence Pleading and Practice Forms-Motor Vehicle Accidents (MV-PP)
- American Jurisprudence Trials (AMJUR-TRIALS)
- American Jurisprudence Trials-Motor Vehicle Accidents (MV-TRIALS)
- American Jurisprudence 2D Land Use & Zoning Practice (AMJUR-ZONPL)
- Causes of Action-Products Liability (PL-COA)
- American Jurisprudence Pleading and Practice Forms-Products Liability (PL-PP)



- American Jurisprudence Legal Forms 2D Land Use & Zoning Practice (AMJURLF-ZONPL)
- American Jurisprudence Pleading & Practice Forms Land Use & Zoning Practice (AMJURPP-ZONPL)
- Causes of Action (COA)
- Causes of Action-Personal Injury Damages (DMG-COA)
- American Jurisprudence Proof of Facts-Personal Injury Damages (DMG-POF)
- American Jurisprudence Trials-Products Liability (PL-TRIALS)
- Causes of Action-Premises Liability (PREMLIAB-COA)
- American Jurisprudence Proof of Facts-Premises Liability (PREMLIAB-POF)
- American Jurisprudence Pleading and Practice Forms-Premises Liability (PREMLIAB-PP)
- American Jurisprudence Trials-Premises Liability (PREMLIAB-TRIALS)

### **Corpus Juris Secundum (CJS)**

Cited more than 90,000 times by all levels of courts throughout the United States, this national legal encyclopedia covers all state and federal legal topics. General rules of law are summarized in "Black Letter" headings and expanded upon in the text. Also provides the limitations and exceptions to the rules where appropriate. CJS provides concise legal analysis with exhaustive case citations, making an effort to cite as many states and federal cases as possible. Can be used as a case finder for your jurisdiction, then plug into West's Key Number System to get deeper analysis of local law. Since the citations and the supporting cases involve both state and federal courts, the user gets a full perspective of the law in a local jurisdiction as well as across the country. The encyclopedia contains over 400 separate titles on a broad range of legal topics. Documents available for each topic may include a summary, topic contents, individual sections of text, and a table of parallel references.

### **Michigan Tax Guide**

West is offering the Michigan Tax Guide at the pricing specified on page one of this Price Proposal.

West is pleased to have a longstanding partnership with the Michigan Department for the publication of the *Michigan Tax Guide*. This partnership has culminated into the publication of a thorough, accurate, and timely source for tax professionals.

Please note, West is offering this pricing on a cumulative basis for the 2005 purchase of the "2006 Michigan Tax Guide". For example, based on the agency's current purchase of 50 sets of the 2006 edition, if, before December 31, 2005, the agency purchases an additional 47 sets, West will retroactively adjust the previous purchase price so that all sets are purchased at \$421 per set. By allowing the agency to accumulate the 2005 purchases of the 2006 edition, the agency will see savings of \$940.

In addition to the prices set-forth in Article 1, Attachment A, West is offering the following price for purchases of individual volumes of the *Michigan Tax Guide*:

0-20 Volumes	\$94 per volume
21-40 Volumes	\$90 per volume
41-60 Volumes	\$87 per volume
61-80 Volumes	\$83 per volume
81-100 Volumes	\$79 per volume
101-120 Volumes	\$75 per volume
121-140 Volumes	\$72 per volume

### **Westlaw Terms and Conditions**

The following terms and conditions apply to this contract (hereinafter "contract").

- **Contract Term.** The contract term is for Three Years beginning March 1, 2006 and ending February 28, 2009 (Years One through Three).



- **Renewal Option.** This contract may be renewed for two additional one-year periods (Years Four through Five) by mutual agreement of West and the agency, subject to available funding. West will work with the agency to negotiate reasonable pricing for Years 4 & 5. The price for Westlaw included databases, features and services will not increase more than 3% during each renewal year. The price for Michigan Tax Guide will not increase more than the PPI for Technical, Scientific and Professional Books.
- **Authorized Users.** Only users authorized to use Westlaw by the agency may access and use Westlaw under the terms of the fixed-rate agreement, and such use must be solely for purposes directly related to the agency's research and work.
- **Passwords.** Each Westlaw user must be assigned a separate Westlaw password. Westlaw passwords may only be used by the person to whom the password is issued. Sharing of Westlaw passwords between or among users is STRICTLY PROHIBITED. West reserves the right to issue additional passwords to the agency if West learns that Westlaw has been used by a person other than the person to whom the password has been issued.
- **Included and Excluded Charges.** The list of Included and Excluded Charges on page 5-6 of this proposal outlines the databases, features, and services that are included and excluded from the proposed fixed monthly charge. Access to and usage of any of the excluded databases will be billed separately as excluded charges. These excluded databases, features, and services will be charged at the applicable rates (including applicable transaction, communications, and other associated charges, if any) for each database, feature, or service accessed according to the then-current terms and conditions as set forth in Schedule A to Westlaw Subscriber Agreement Plan 2 Government Service (State of Michigan Contract, Appendix A).

West may, at its option, make certain databases, features, and services excluded charges if West is contractually bound or otherwise required to do so by a contributor of data to West, or if the databases, features, and services are enhanced or released after the effective date of any contract awarded to West pursuant to this proposal.

- **Westlaw Subscriber Agreement/West Software License Agreement.** All access to and usage of Westlaw (via WestMate or westlaw.com) is governed by the Westlaw Subscriber Agreement and West Software License Agreement. These agreements are provided in Appendix B and C to the State of Michigan Contract and will be incorporated by reference into and made part of the State contract. In the event of conflicts between the State of Michigan's terms and conditions (Article 2) of the State's Contract) and Westlaw Subscriber Agreement and/or West Software License Agreement, the terms and conditions of the State's Contract (Article 2) will take precedence.



- **Contracting with West.** This contract is with West Publishing Corporation.

(i) SUMMARY OF DATABASES, FEATURES, AND SERVICES

**Included Databases, Features, and Services**

The following table provides a **summary of the core databases, features, and services that are included** in West’s price proposal. All transactional and communication charges associated with these included databases, features, and services are covered by West’s proposed fixed monthly charge. (An agency-specific listing of all included databases is available upon request.)

INCLUDED DATABASES, FEATURES, AND SERVICES			
<p><b>LEGAL INFORMATION</b></p> <p><b>Federal &amp; State Materials</b></p> <ul style="list-style-type: none"> <li>- Cases &amp; Judicial Materials</li> <li>- Statutes &amp; Legislative Materials</li> <li>- Court Rules &amp; Orders</li> <li>- Administrative Law &amp; Regulations</li> <li>- Selected Briefs (U.S. Supreme Court, California Supreme &amp; Appellate Courts)</li> <li>- Attorney General Opinions</li> </ul> <p><b>Legal Texts &amp; Periodicals</b></p> <ul style="list-style-type: none"> <li>- Law Reviews &amp; Journals</li> <li>- Legal Texts &amp; Treatises</li> <li>- Legal Newspapers &amp; Newsletters</li> <li>- Restatements of the Law</li> <li>- American Law Reports (ALR)</li> <li>- American Jurisprudence 2d (AMJUR)</li> </ul> <p><b>Practice Area Materials</b></p> <p><b>RIA Library on Westlaw</b></p> <p><b>WGL Library on Westlaw</b></p> <p><b>Miscellaneous Materials</b></p> <ul style="list-style-type: none"> <li>- Black’s Law Dictionary</li> <li>- Uniform Laws Annotated</li> <li>- Practising Law Institute Materials</li> <li>- West Legal Directory</li> </ul>	<p><b>NEWS &amp; BUSINESS INFO</b></p> <p><b>National Newspapers</b></p> <p><b>Local and Regional Newspapers</b></p> <p><b>International Newspapers</b></p> <p><b>Newsires</b></p> <p><b>News Magazines</b></p> <p><b>Networks</b></p> <p><b>Financial News</b></p> <p><b>Business Publications</b></p> <p><b>Industry Publications</b></p>	<p><b>PUBLIC RECORDS</b></p>	<p><b>FEATURES &amp; SERVICES</b></p> <p><b>Citator Services<sup>1</sup></b></p> <ul style="list-style-type: none"> <li>- KeyCite</li> <li>- WestCheck (with QuoteRight)</li> <li>- Table of Authorities</li> </ul> <p><b>Current Awareness Services<sup>2</sup></b></p> <ul style="list-style-type: none"> <li>- WestClip</li> <li>- KeyCite Alert</li> </ul> <p><b>Searching<sup>1</sup></b></p> <ul style="list-style-type: none"> <li>- Terms &amp; Connectors</li> <li>- Natural Language</li> <li>- Multiple Database Searching</li> <li>- Field Searching</li> </ul> <p><b>Content Retrieval<sup>1</sup></b></p> <ul style="list-style-type: none"> <li>- ResultsPlus</li> <li>- StatutesPlus</li> <li>- Key Number Service</li> </ul> <p><b>Content Delivery<sup>1</sup></b></p> <ul style="list-style-type: none"> <li>- Printing (including dual column)</li> <li>- Downloading</li> </ul> <p><b>Editorial Enhancements</b></p> <p><b>Customer Services</b></p> <ul style="list-style-type: none"> <li>- Training</li> <li>- Customer &amp; Technical Support</li> <li>- Research Assistance</li> <li>- QuickView+ (Online Reports)</li> <li>- Online Support</li> <li>- Documentation</li> </ul>

<sup>1</sup> These features are included for usage associated with included databases only. Usage of these features for excluded databases will be charged at the then-current applicable rates. See “Included and Excluded Charges” on page 4. <sup>2</sup> Excludes continuous frequency clipping.

**Excluded Databases, Features, and Services**

The following table provides a **summary of the databases, features, and services that are not included** in West’s price proposal; these databases, features, and services are available to the agency at an additional cost. Please refer to “Included and Excluded Charges” on page 4 for more information. (An agency-specific listing of all excluded databases is available upon request.)



**EXCLUDED DATABASES, FEATURES, AND SERVICES**

LEGAL INFORMATION	NEWS & BUSINESS INFO	PUBLIC RECORDS	FEATURES & SERVICES
<ul style="list-style-type: none"> <li>- All Other AMJUR Databases (e.g., Trials, Legal Forms, Proof of Facts, Pleadings &amp; Practice)</li> <li>- BNA Databases</li> <li>- Enflex Databases</li> <li>- Premier Databases (Thomson, General, Reserve, Advantage)</li> <li>- All Other Briefs on Westlaw</li> <li>- Specialty Databases (e.g., state public utilities reports, bill tracking)</li> </ul>	<ul style="list-style-type: none"> <li>- Company Profiles Databases</li> <li>- Dialog Databases</li> <li>- Investext</li> </ul>	<p><b>Westlaw Public Records Locating People</b></p> <ul style="list-style-type: none"> <li>- People Finder</li> <li>- Death Records</li> <li>- Voter Registration Records</li> <li>- West Legal Directory</li> </ul> <p><b>Assets</b></p> <ul style="list-style-type: none"> <li>- Tax Assessor Records</li> <li>- Real Property Records</li> <li>- Motor Vehicle, Aircraft, Boat Records</li> <li>- Stock Ownership Records</li> </ul> <p><b>Adverse Filings</b></p> <ul style="list-style-type: none"> <li>- Bankruptcy Filings</li> <li>- Lawsuit Filings</li> <li>- Liens and Civil Judgments</li> <li>- UCC Records</li> </ul> <p><b>Licenses and Registrations</b></p> <ul style="list-style-type: none"> <li>- DEA and FAA Licenses</li> <li>- Sales and Use Tax Licenses (CA &amp; TX)</li> <li>- Carry Concealed Weapons Permits</li> <li>- Hunting and Fishing Permits</li> </ul> <p><b>Business &amp; Corporate Information</b></p> <ul style="list-style-type: none"> <li>- Corporate Records</li> <li>- Business Registrations</li> <li>- Litigation Preparation Records</li> <li>- Name Availability</li> <li>- Credit Bureau Header Databases</li> <li>- Criminal Records</li> <li>- Deed Images</li> <li>- Delaware Corporate Records</li> <li>- Dossier Databases</li> <li>- Drivers' Licenses—Wallet Data</li> <li>- Dun &amp; Bradstreet Databases</li> <li>- Specific People Finder Databases (i.e., PEOPLE-CH, PEOPLE-ADDR, and PEOPLE-SSN)</li> <li>- Real Property Reports</li> <li>- WestDockets Databases</li> </ul>	<ul style="list-style-type: none"> <li>- West Reporter Images</li> <li>- Westlaw Profiler &amp; Profiler Alert</li> <li>- PDF Charges (e.g., Investext, Briefs, Patent Images, WestDockets, &amp; Attorney Medical Advantage)</li> <li>- WestDockets Alert</li> <li>- Dun and Bradstreet Alert</li> <li>- PastStat Locator</li> <li>- BNA Clip</li> <li>- QUOTE Service</li> <li>- West Document Retrieval (WDR)</li> <li>- Leased Line Charges</li> </ul>



## Article 2 – General Terms and Conditions

### 2.010 Contract Structure and Administration

#### 2.011 Definitions

Capitalized terms used in this Contract (including its Attachments) 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 A**.
- (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 Department of Treasury (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:

Melissa Castro, CPPB  
 Office of Acquisition Services  
 Department of Management and Budget  
 Mason Bldg, 2nd Floor  
 PO Box 30026  
 Lansing, MI 48909  
 Email: [castrom@michigan.gov](mailto:castrom@michigan.gov)  
 Phone: 517-373-1080

## 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 Department of Treasury, 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:

Miriam VanGoor  
 Department of Treasury  
 430 West Allegan  
 Lansing, MI 48922  
 E-mail: [Vangoorm@michigan.gov](mailto:Vangoorm@michigan.gov)  
 Phone: 517- 241-1789.

## 2.016 Reserved

### 2.020 Contract Objectives/Scope/Background

## 2.021 Reserved

## 2.22 Reserved

**2.023 Reserved****2.024 Reserved****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 from March 1, 2006 through February 28, 2008. 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.

(ii) Key Personnel shall be dedicated as defined in the Contract 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.

(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.

(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.

#### 2.062 Reserved

#### 2.063 Reserved



## 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 Attachments 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

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

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

(i) SLAs will not be calculated for individual Incidents where any event of Excusable Failure has occurred as defined in **Section 2.202**,

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

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

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

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

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

(b) Chronic Failure for any Service(s) will be defined as three (3) unscheduled outage(s) or interruption(s) on any individual Service for the same reason or cause or if the same reason or cause was reasonably discoverable in the first instance over a rolling thirty (30) day period. Chronic Failure will result in the State's option to terminate the effected individual Service(s) and procure them from a different vendor for the chronic location(s) with Contractor to pay the difference in charges for up to three (3) additional months. The termination of the Service will not affect any tiered pricing levels.

(c) Root Cause Analysis will be performed on any Business Critical outage(s) or outage(s) on Services when requested by the Contract Administrator. Contractor will provide its analysis within two (2) weeks of outage(s) and provide a recommendation for resolution.

(d) All decimals shall be rounded to two decimal places with 5 and greater rounding up and 4 and less rounding down unless otherwise specified.

2.080 Delivery and Acceptance of Deliverables

**2.081 Delivery Responsibilities**

Unless otherwise specified by the State within an individual order, the following shall be applicable to all orders issued under this Contract.

(a) Shipment responsibilities - Services performed/Deliverables provided under this Contract shall be delivered "F.O.B. Destination, within Government Premises." The Contractor shall have complete responsibility for providing all Services/Deliverables to all site(s) unless otherwise stated. Actual delivery dates will be specified on the individual purchase order.

(b) Delivery locations - Services will be performed/Deliverables will be provided at every State of Michigan location within Michigan unless otherwise stated in the SOW. Specific locations will be provided by the State or upon issuance of individual purchase orders.

(c) Damage Disputes - At the time of delivery to State Locations, the State shall examine all packages. The quantity of packages delivered shall be recorded and any obvious visible or suspected damage shall be noted at time of delivery using the shipper's delivery document(s) and appropriate procedures to record such.

Where there is no obvious or suspected damage, all deliveries to a State Location must be opened by the State and the contents inspected for possible internal damage not visible externally within fourteen (14) days of receipt. Any damage must be reported to the Contractor within five (5) days of inspection. If this inspection does not occur and damages not reported within thirty (30) days of receipt, the cure for such damaged deliveries shall transfer to the delivery signing party.



## 2.082 Delivery of Deliverables

(a) Where applicable, the Statements of Work/POs contain lists 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"), a good ("Physical Deliverable") or a Service. 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 the Contract.

## 2.083 Testing

(a) Prior to delivering any of the above-mentioned Statement of Work Physical Deliverables or Services to the State, Contractor will first perform all required quality assurance activities to verify that the Physical Deliverable or Service is complete and in conformance with its specifications listed in the applicable Statement of Work or Purchase Order. Before delivering a Physical Deliverable or Service 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 or Service 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.

(b) If a Deliverable includes installation at a State Location, then Contractor shall (1) perform any applicable testing, (2) correct all material deficiencies discovered during such quality assurance activities and testing, and (3) inform the State that the Deliverable is in a suitable state of readiness for the State's review and approval. To the extent that testing occurs at State Locations, the State shall be entitled to observe or otherwise participate in testing.

## 2.084 Approval of Deliverables, In General

(a) All Deliverables (Physical Deliverables and Written Deliverables) and Services 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 will include the successful completion of Testing as applicable in **Section 2.083**, 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.

(b) The State's obligation to comply with any State Review Period is conditioned on the timely delivery of Deliverables/Services being reviewed.

(c) Prior to commencement of its review or testing of a Deliverable/Service, the State may inspect the Deliverable/Service to confirm that all components of the Deliverable/Service have been delivered without material deficiencies. If the State determines that the Deliverable/Service has material deficiencies, the State may refuse delivery of the Deliverable/Service without performing any further inspection or testing of the Deliverable/Service. Otherwise, the review period will be deemed to have started on the day the State receives the Deliverable or the Service begins, and the State and Contractor agree that the Deliverable/Service is ready for use and, where applicable, certification by Contractor in accordance with **Section 2.083(a)**.

(d) The State will approve in writing a Deliverable/Service upon confirming that it conforms to and, performs in accordance with, its specifications without material deficiency. The State may, but shall not be required to, conditionally approve in writing a Deliverable/Service 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/Service that remain outstanding at the time of State approval.

(e) If, after three (3) opportunities (the original and two repeat efforts), Contractor is unable to correct all deficiencies preventing Final Acceptance of a Deliverable/Service, 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 the 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/Service and will pay the State an additional sum equal to ten percent (10%) of such excess expenditure to cover the State's general expenses provided the State can furnish proof of such general expenses;



or (iii) terminate the particular Statement of Work for default, either in whole or in part by notice to Contractor provided Contractor is unable to cure such breach. 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.

(f) The State, at any time and in its reasonable discretion, may halt the testing or approval process if such process reveals deficiencies in or problems with a Deliverable/Service 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 stop using the Service or return the applicable Deliverable to Contractor for correction and re-delivery prior to resuming the testing or approval process.

#### **2.085 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 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 Deliverable is approved in the form delivered by Contractor or describing any deficiencies that must be corrected prior to approval of the Deliverable (or at the State's election, subsequent to approval of the Deliverable). If the State delivers to Contractor a notice of deficiencies, Contractor will correct the described deficiencies and within thirty (30) 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 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 Deliverable to confirm that the identified deficiencies have been corrected.

#### **2.086 Process for Approval of Services**

The State Review Period for approval of Services is governed by the applicable Statement of Work (failing which the State Review Period, by default, shall be thirty (30) Business Days for Services). The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Service is approved in the form delivered by Contractor or describing any deficiencies that must be corrected prior to approval of the Services (or at the State's election, subsequent to approval of the Service). If the State delivers to Contractor a notice of deficiencies, Contractor will correct the described deficiencies and within thirty (30) Business Days resubmit the Service 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 implementation of a corrected Service 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 Service for conformity and that the identified deficiencies have been corrected.

#### **2.087 Process for Approval of Physical Deliverables**

The State Review Period for approval of Physical Deliverables is governed by the applicable Statement of Work (failing which the State Review Period, by default, shall be thirty (30) continuous Business Days for a Physical Deliverable). The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Deliverable is approved in the form delivered by Contractor or describing any deficiencies that must be corrected prior to approval of the Deliverable (or at the State's election, subsequent to approval of the Deliverable). If the State delivers to Contractor a notice of deficiencies, Contractor will correct the described deficiencies and within thirty (30) 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 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 Deliverable to confirm that the identified deficiencies have been corrected.



## 2.088 Final Acceptance

Unless otherwise stated in the Statement of Work or Purchase Order, "Final Acceptance" of each Deliverable shall occur when each Deliverable/Service has been approved by the State following the State Review Periods identified in **Sections 2.080-2.087**. Payment will be made for Deliverables installed and accepted. Upon acceptance of a Service, the State will pay for all Services provided during the State Review Period that conformed to the acceptance criteria.

### 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 Attachment) 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 A**). 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 A** 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 A**.

## 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 Attachment) 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 A**. 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

### 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 the 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 Reserved**

### **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 Reserved**

### 2.110 Records and Inspections

## **2.111 Records and Inspections**

The Contractor agrees that the State may, upon 24-hour notice, perform an audit at Contractor's location(s) to determine if the Contractor is complying with the requirements of the Contract. The Contractor agrees to cooperate with the State during the audit and produce all records and documentation that verifies compliance with the Contract requirements.

## **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 Attachments 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

#### 2.161c License

Contractor grants to the State a non-exclusive, royalty-free, site-wide, irrevocable, transferable license to use the Software and related documentation according to the terms and conditions of this Contract. For the purposes of this license, "site-wide" includes any State of Michigan office regardless of its physical location.

The State may modify the Software and may combine such with other programs or materials to form a derivative work. The State will own and hold all copyright, trademark, patent and other intellectual property rights in any derivative work, excluding any rights or interest in Software other than those granted in this Contract.

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

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

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

#### 2.162 Reserved

#### 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.

#### **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 its response to the RFP or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Contractor as of the respective dates, or for the respective periods, covered by 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 RESERVED**

**2.174 RESERVED**

**2.175 RESERVED**



## 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.

2.190 Indemnification

**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. The State agrees to provide prompt written notification to West of any such claim or loss to the Contractor and the Contractor will be allowed to participate in any negotiation, arbitration, settlement and/or litigation of such claim or loss.

(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 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 **Attachment A**. 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 Reserved2.250 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:  
State of Michigan  
Office of Acquisition Services  
Attention:  
PO Box 30026  
530 West Allegan  
Lansing, Michigan 48909

Contractor:  
West Publishing  
Attn: Ellen Gillespie  
610 Opperman Dr.  
Eagan, MN 55123

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 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 Reserved**

**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 *Reserved*

2.330 *Reserved*



## Schedule A to Westlaw® Subscriber Agreement



### Plan 2 Government Service

Available only to government personnel accessing Westlaw for government purposes.

Upon accessing Westlaw, a user may elect either hourly or transactional billing in the Options Directory for the WestMate® and the westlaw.com® platforms. Such billing election will be effective for all subsequent sessions unless the election is changed within the same access platform. The SUBSCRIBER Database lists the hourly billing classifications, transactional charges and per document charges for each database.

#### 1. Hourly Charges

A. Hourly Database Charges	Hourly Rate
i. Combination Databases	\$74
ii. Highlights Databases	123
iii. Basic Databases	197
iv. Westlaw Standard Databases	267
v. Westlaw Standard Databases-Codes	320
vi. Deluxe Databases	335
vii. Specialty Databases	370
viii. Premium Databases	382
ix. Allfile Databases	412
x. Multi-Search Databases	435
xi. Super Allfile Databases	465
xii. Select Databases	615
xiii. ResultsPlus™ Standard Databases	334
xiv. ResultsPlus Premium Databases	491
xv. ResultsPlus Allfiles Databases	528

Usage charges begin when Subscriber's password is transmitted and end when Subscriber's telecommunications link is disconnected.

**B. Communications Charges.** \$13 per hour.  
Communications charges begin when a password is transmitted and end when the telecommunications link is disconnected -- they apply to the entire Westlaw session, excluding offline transmission, offline automated citation checking, Dockets™ and the SUBSCRIBER Database (when accessing Westlaw via transactional billing).

#### 2. Transactional Charges

##### A. Search Charges

Each search query will incur a search charge. Search charges range from \$0 to \$140 per search. The search charge applicable to each database is available in the SUBSCRIBER Database. For sales tax purposes only, a percent of each search charge is allocated to communications.

Search charges for multiple database searches are discounted as follows:

1 database	No discount
2-3 databases	10% discount
4-10 databases	20%
11+ databases	N/A

##### B. Online Find Charges

Find (includes Primary Law)	\$8.00/document
Find (includes Secondary Law and Dockets)	10.00/document
Find (BNA, RIA)	15.00/document
Find (PastStat Loc, State LH, NetScan & StateNet)	15.00/document
Find (Results Plus)	25.00/document
Find (Briefs and Trial Documents)	40.00/document
Find (Depositions)	95.00/document
Find by Title*	N/A

\*Find by Title creates a search query which will result in a search charge. No separate Find transactional charge will apply. See SUBSCRIBER Database for detailed pricing.

#### C. Online Citation Checking Charges

Citation Service	Charge Per Citation
KeyCite®	\$4.25
RIA-Cite	4.25

QuickCite® creates a search query which will result in a search charge. No separate online citation checking charges apply. No offline transmission charges apply.

**D. QUOTE Charges** \$ .15 per entry

**3. Subscription Charge.** \$125 per month per agency

#### 4. Volume Discount

Monthly Westlaw Charges	Monthly Volume Discount
\$0-\$5,000	0%
5,001-10,000	2.0%
10,001 +	2.5%

Volume discounts are calculated on a monthly basis and are based on Subscriber's average Westlaw Charges from the initial three of the four months prior to the month in which the discount(s) will be applied. Monthly volume discounts are not cumulative and are applied at each level of Westlaw Charges incurred. All Westlaw Charges, after applicable credits, except Westlaw Public Records transaction, Company Profiles Database, Derwent World Patents Legal Database, DIALOG on Westlaw Databases, Dossier Databases, AMA-ATLAS Database and PDF charges are eligible for the volume discount.

#### 5. Offline Transmission Charges

A user may elect either per line or per document offline transmission billing in the Options Directory. Such election will be effective for all subsequent sessions unless the election is changed. Offline transmission charges apply to all printing and downloading to storage devices and facsimile machines, unless otherwise indicated.

	Rate Per Line	Rate Per Document
Westlaw Public Records Databases	\$ .035	\$ 1
DIALOG on Westlaw Databases	N/A	6.50
Selected databases	up to .65	up to 50
All other databases	.035	6.50

#### 6. WestCheck® and find&print.com Charges

Citation Service	Charge Per Citation
KeyCite	\$4.25
Table of Authorities	1.00
QuoteRight®	7.00
Find	12.50 – 101.50
Find (Selected databases)	25.00 – 60.00
Find (Depositions) - find&print.com only	101.50
Content Verification	.50

No offline transmission charges apply.

#### 7. Training Charges

Onsite training and training at West Information Centers will be provided at no charge.



**8. Alert Services Charges**

WestClip®	
Non-continuous Clipping	\$0
Continuous Clipping	\$4.50 per day per search
BNA Clipping	\$14.00 per transaction
KeyCite Alert	
Non-continuous Clipping	\$5.50 per transaction
Continuous Clipping	\$8.00 per day per transaction

Database and DIALOG per document charges apply to the online display of WestClip and Dockets Alert results. Find charges and charges associated with documents viewed from KeyCite Alert and Dockets Alert results shall apply. Connect time and communications charges do not apply during transactional billing sessions. Offline transmission charges do not apply to WestClip cite lists (excluding BNA) or KeyCite Alert.

**9. Images Charges**

	View Online	Printed or Downloaded
DIALOG on Westlaw Databases	\$4	\$4
All other databases	0	0

Offline transmission charges apply to text printed with images, but not to the images themselves. Communications charges do not apply during transactional billing.

**10. Westlaw Public Records Charges**

The Scope screen for each Westlaw Public Records Database lists its database classification for hourly billing. The search charge applicable to each Westlaw Public Records Database is available in the SUBSCRIBER Database. Additional charges for third-party services may apply. The following transaction charges apply in addition to the hourly and transactional charges:

	Charge Per Detail Record Viewed
Delaware Corporate Records	\$9.00
	Charge Per Entry
D&B Alert	\$5.00

The following charges apply in lieu of hourly and transactional charges:

	Charge Per Document
<b>Duns Business Records Plus*</b>	
Business Record & Full Financial	\$128.90
Business Information Report (domestic)	110.00
Business Information Report (international)	
Africa	443.00
Middle East	443.00
Asia Pacific	443.00
Latin America	340.00
Europe	288.00
Canada	144.00
Comprehensive Report	129.50
Family Tree Report	60.10
Business Record & Financial Abstract	60.10
Business Record	35.70
Business Abstract	23.35
Family Member Profile	9.80
Company Relations	2.35
Per company - 250 companies maximum	
(250 companies or more - no additional charge)	
Branch Locations	2.35
Per location - 250 locations maximum	
(250 locations or more - no additional charge)	

\*Minimum fee of \$15.75 per search.

**11. Company Profiles Database Charges**

Index Search	\$0
Company Profile	35 per report
ResultsPlus	40 per report

Offline transmission charges apply to citations list but do not apply to Company Profiles reports themselves.

**12. DIALOG on Westlaw Charges**

The SUBSCRIBER Database lists the hourly database classification, transactional search charges and any applicable per document and images charges for each DIALOG database or service.

**Additional Terms.** Certain DIALOG Databases are subject to additional terms and conditions as set forth in the most current Database Supplier Terms and Conditions, which are available online.

**13. Dockets Charges**

The following charges apply in lieu of hourly and transactional charges:

Search	\$7 per transaction
View document	5 per document
Update document	2 per document
Dockets Alert	4 per transaction
Multi-Base Searches	\$20 – \$100 per transaction

**14. Dossier Databases Charges**

Person Profile (cite list)	\$35 per search
Person Profile Report	40 per report
Company Records Scanner (cite list)	25 per search
Company Records Scanner Report	50 per report
No offline transmission charges apply.	

**15. PDF Charges**

ResultsPlus Investext	\$14.95 per 1 <sup>st</sup> page
(Each additional page)	9.95 per page
Attorney Medical Advantage	225.00 per image
Briefs	40.00 per image
Deed Image	25.00 per image
Investext	9.95 per page
Patent Image	3.00 per image
Dockets PDF	4.00 per image
No offline transmission charges apply.	

**16. West Reporter Images**

West Reporter Images	\$10.00 per image
No offline transmission charges apply.	



# Westlaw<sup>®</sup> Subscriber Agreement

AGREEMENT entered into between \_\_\_\_\_ ("Subscriber") and WEST, a Thomson business ("West") regarding Westlaw, its computer assisted legal research service, as follows:

## 1. License.

**a. Grant.** Subscriber is granted a non-exclusive, non-transferable, limited license to access Westlaw. Westlaw consists of various West-owned and third party databases, services, functions and remotely-accessed gateways (collectively "Features") which may change from time to time. Access to certain Features may be restricted. Subscriber is licensed to use data made available on Westlaw ("Data," which includes "Downloaded Data" as defined below) solely in the regular course of legal and other research and related work. Certain Features are licensed subject to paragraphs 2 through 4 or subject to "Additional Terms" (as defined below), all of which take precedence over the license granted in this paragraph. Except as otherwise provided with respect to certain Data, the license includes the right to download and temporarily store insubstantial portions of Data ("Downloaded Data") to a storage device under Subscriber's exclusive control solely (i) to display internally such Downloaded Data and (ii) to quote and excerpt from such Downloaded Data (appropriately cited and credited) by electronic cutting and pasting or other means in memoranda, briefs and similar work product created by Subscriber in the regular course of its research and work. Subscriber may also create printouts of Data for internal use and for distribution to third parties if such third parties agree not to further distribute the printouts. Subscriber may, on an occasional basis and via Westlaw functionality, direct West to transmit individual documents in electronic format to individual internal user(s). Direct transmission of electronic copies by Subscriber is prohibited, except as provided in the electronic brief terms of paragraph 2 herein.

**b. Limitations.** Subscriber may not copy, download, scrape, store, publish, transmit, retransmit, transfer, distribute, disseminate, broadcast, circulate, sell, resell or otherwise use the Data, or any portion of the Data, in any form or by any means, except (i) as expressly permitted by this Agreement, (ii) with West's prior written permission, or (iii) if not expressly prohibited by this Agreement or by the "Additional Terms", as allowed under the fair use provision of the Copyright Act (17 U.S.C.A. § 107). Downloaded Data shall not be stored or used in an archival database or other searchable database except as expressly permitted by this Agreement or as quoted in Subscriber's work product. Subscriber shall not sell, license or distribute Data (including printouts and Downloaded Data) to third parties or use Data as a component of or as a basis for any material offered for sale, license or distribution.

**c. Rights in Data.** Except for the license granted in this Agreement, all rights, title and interest in Data, in all languages, formats and media throughout the world, including all copyrights, are and will continue to be the exclusive property of West and other contributors ("Contributors").

**d. Additional Terms.** Certain third-party Features are governed by terms and conditions which are different from those set forth in this Agreement ("Additional Terms"). Subscriber will be given an opportunity to review Additional Terms by receiving notice of such Additional Terms in writing or online. Additional Terms may be modified effective upon West giving Subscriber notice (in writing or online) of the modification. By using Features governed by Additional Terms, Subscriber agrees to, and will be obligated to comply with, all such Additional Terms as well as the terms and conditions in this Agreement. All Additional Terms will be considered part of this Agreement.

**2. West Proprietary Data.** Subscriber may, via Westlaw functionality, direct West to transmit West-proprietary documents (i.e., documents not licensed by West from third parties) in electronic format to internal user(s) or to a third party who is an individual if such third party agrees not to further disseminate such documents. Subscriber acknowledges its responsibility in assuring compliance with the foregoing by any third party to whom Subscriber transmits West-proprietary documents pursuant to the preceding sentence. Direct transmission of electronic copies by Subscriber is prohibited, except as provided in the electronic brief terms set forth herein. West further grants a non-exclusive, non-transferable, limited license to individual Westlaw users within Subscriber entities to store and use West-proprietary Downloaded Data (as defined above) in a searchable database maintained in connection with an ongoing project of the user ("Project Database"). Such database must consist preponderantly of users' work product with access limited to those internal users actively working on the project. The West-proprietary Downloaded Data may be maintained in the Project Database so long as the project remains active or until any termination of the Subscriber Agreement, whichever occurs first. Retention of Downloaded Data in a Project Database after the project ends, in an archival database as used as a research tool or in a database accessible to 10/1/05

external users is prohibited. West further grants to Subscriber a limited, non-exclusive, non-transferable license to include West-proprietary Downloaded Data in briefs prepared for a specific cause of action for a specific court in an electronic format. Distribution or dissemination of such West-proprietary Downloaded Data in connection with or as part of a brief is limited to the court before which the cause of action is to be heard, the parties to the cause of action, or their representatives. Any further distribution is prohibited without written permission of West. West-proprietary Downloaded Data included in such briefs must retain West copyright notices and indicate that use of, distribution and dissemination to the permitted parties is with the permission of West.

**3. West Legal Directory™.** Subscriber may use Data contained in West Legal Directory ("WLD") internally in the regular course of Subscriber's business. Subscriber may also create printouts of insubstantial portions of Data consisting of individual WLD listings or selected names and addresses for its own use. Use of WLD to create mailing or marketing lists for commercial purposes or for distribution to third parties is prohibited.

**4. Public Records Databases.** Public records databases consist of third party public records databases and filings as identified in the Westlaw Directory ("Public Records Databases"). Subscriber shall not use Public Records Databases in a manner contrary to or in violation of any applicable federal, state, or local law, rule or regulation, including without limitation the Fair Credit Reporting Act (15 U.S.C.A. § 1681 et seq.). Subscriber certifies that it will not use any credit information obtained by it from Public Records Databases as a factor in establishing a consumer's eligibility for credit or insurance to be used primarily for personal, family, or household purposes, for employment purposes or for governmental licenses. Subscriber acknowledges that driver license Data accessed via Westlaw is subject to the Driver Protection Privacy Act (18 U.S.C.A. § 2721 et seq.) and related state laws and regulations. By accessing driver license Data, Subscriber acknowledges that from time to time, West and its providers and/or various states may inquire as to Subscriber's compliance with applicable laws. Subscriber agrees to cooperate with said inquiry, subject to any attorney-client confidentiality.

**5. Charges and Modification of Charges.** Charges payable by Subscriber for access to Westlaw ("Westlaw Charges") will commence on the date West processes Subscriber's order. Westlaw Charges will be as stated in the Schedule A Price Plan elected by Subscriber or as otherwise agreed upon in writing by the parties. Westlaw Charges may be modified upon at least 30 days prior notice to Subscriber in writing or online. Charges are exclusive of sales, use, value added tax (VAT) or equivalent, ad valorem, personal property and other taxes, which are the responsibility of Subscriber. Subscriber will pay all invoices in full within 30 days of receipt. If full payment is not made, Subscriber may be charged up to the maximum legal interest on any unpaid balance.

## 6. Westlaw Software and westlaw.com™.

**a. Westlaw Software.** West may make available to Subscriber, on a subscription basis, software for use in connection with Westlaw. Such software, including new versions and the accompanying user documentation, may be referred to collectively as "Software." All Software will be licensed to Subscriber under a license agreement which will accompany the Software. By using the Software and taking such other action as may be referenced in the Agreement as constituting acceptance, Subscriber agrees to be bound by the terms and conditions of the accompanying license agreement. If Subscriber does not so agree, Subscriber must return any tangible copies of the Software in its possession or control.

**b. westlaw.com.** westlaw.com is an Internet-based service that provides access to Westlaw. West grants Subscriber a non-exclusive, non-transferable, limited license to use westlaw.com (including all versions and updates). Subscriber may not reverse engineer, decompile, disassemble or otherwise attempt to discern the source code of the components of westlaw.com nor may Subscriber reproduce all or any portion of the components of westlaw.com. Subscriber may use Data cached in Subscriber's local disk drive solely in support of its use of westlaw.com. Certain software used by Subscriber may not be capable of supporting westlaw.com. The performance of westlaw.com varies with the manufacturers' equipment with which it is used.

**7. Disclaimer of Warranties and Limitation of Liability.** EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, ANY SCHEDULE OR LICENSE AGREEMENT, WESTLAW, FEATURES, DATA, SOFTWARE AND WESTLAW.COM ARE PROVIDED "AS IS," WITHOUT WARRANTY



OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, OMISSIONS, COMPLETENESS, CURRENTNESS AND DELAYS. SUBSCRIBER'S EXCLUSIVE REMEDY AND WEST'S, ITS AFFILIATES AND/OR CONTRIBUTORS' ENTIRE LIABILITY UNDER THIS AGREEMENT, IF ANY, FOR ANY CLAIM(S) FOR DAMAGES RELATING TO WESTLAW, FEATURES, DATA, SOFTWARE OR WESTLAW.COM WHICH ARE MADE AGAINST THEM, INDIVIDUALLY OR JOINTLY, WHETHER BASED IN CONTRACT OR NEGLIGENCE, SHALL BE LIMITED TO THE AGGREGATE AMOUNT OF WESTLAW CHARGES PAID BY SUBSCRIBER RELATIVE TO THE SPECIFIC FEATURE (i.e., DATABASE, SERVICE, FUNCTION OR GATEWAY), THE SOFTWARE OR WESTLAW.COM, AS APPLICABLE, WHICH IS THE BASIS OF THE CLAIM(S) DURING THE 12 MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. IN NO EVENT SHALL WEST, ITS AFFILIATES AND/OR CONTRIBUTORS BE LIABLE TO SUBSCRIBER FOR ANY CLAIM(S) RELATING IN ANY WAY TO (i) SUBSCRIBER'S INABILITY OR FAILURE TO PERFORM LEGAL OR OTHER RESEARCH OR RELATED WORK OR TO PERFORM SUCH LEGAL OR OTHER RESEARCH OR WORK PROPERLY OR COMPLETELY, EVEN IF ASSISTED BY WEST, ITS AFFILIATES OR CONTRIBUTORS, OR ANY DECISION MADE OR ACTION TAKEN BY SUBSCRIBER IN RELIANCE UPON DATA; (ii) ANY LOST PROFITS OR OTHER CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES RELATING IN WHOLE OR IN PART TO SUBSCRIBER'S RIGHTS UNDER THIS AGREEMENT OR USE OF, OR INABILITY TO USE, WESTLAW, FEATURES, DATA , SOFTWARE OR WESTLAW.COM, EVEN IF WEST, ITS AFFILIATES AND/OR CONTRIBUTORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; OR (iii) THE PROCURING, COMPILING, INTERPRETING, EDITING, WRITING, REPORTING, OR DELIVERING DATA. FURTHER, WEST SHALL HAVE NO LIABILITY WHATSOEVER TO SUBSCRIBER FOR ANY CLAIM(S) RELATING IN ANY WAY TO ANY THIRD PARTY FEATURE. NEITHER WEST NOR CONTRIBUTORS MAKE ANY WARRANTY THAT ACCESS TO WESTLAW WILL BE UNINTERRUPTED, SECURE, COMPLETE OR ERROR FREE. NOR DOES WEST MAKE ANY WARRANTY AS TO THE LIFE OF ANY URL. SUBSCRIBER ACKNOWLEDGES THAT PROVISION OF WESTLAW ENTAILS THE LIKELIHOOD OF SOME HUMAN AND MACHINE ERRORS, DELAYS, INTERRUPTIONS AND LOSSES, INCLUDING THE INADVERTENT LOSS OF DATA OR DAMAGE TO MEDIA.

**8. Responsibility for Certain Matters.** Subscriber may access Westlaw from additional Subscriber locations upon prior notice of such location. Subscriber is responsible for notifying West in writing of persons to whom Westlaw passwords are to be issued or from whom passwords are to be revoked. Subscriber is solely responsible for maintaining security of Westlaw passwords. Subscriber is also responsible for all access to and use of Westlaw, including Features, Software and westlaw.com by Subscriber's personnel or Westlaw passwords, whether or not Subscriber has knowledge of or authorizes such access and use.

**9. Limitation of Claims.** Except for claims relating to Westlaw Charges or improper use of Westlaw, Features, Software or westlaw.com, no claim, regardless of form, which in any way arises out of this Agreement, may be made, nor such claim brought, under this Agreement more than one year after the basis for the claim becomes known to the party desiring to assert it.

**10. Term and Termination.** This Agreement will become effective upon approval and acceptance by West in St. Paul, Minnesota, and will continue in force until terminated by either party upon at least 30 days prior written notice of termination to the other party; provided, however, that this Agreement may not be terminated prior to one year after the date Subscriber first accesses Westlaw. Notwithstanding the foregoing, (i) West may terminate this Agreement immediately upon giving written notice of termination to Subscriber if Subscriber commits a material breach of any obligation to West under any other agreement between the parties; (ii) Subscriber may terminate this Agreement immediately upon giving written notice of termination to West after receiving notice of an amendment (as permitted under paragraphs 1(d) and 11) which contains new terms that materially alter the terms of this Agreement and are unacceptable to Subscriber; and (iii) either party may terminate this Agreement immediately upon giving written notice of termination to the other party if the other party commits a material breach of this Agreement.

**11. Effect of Agreement.** This Agreement (which includes all current and future Schedules, Additional Terms and license agreements and the like) embodies the entire understanding between the parties with respect to the subject matter of this Agreement and supersedes any and all prior understandings and agreements, oral or written, relating to the subject matter. Except as otherwise provided in this Agreement, West may amend the terms and conditions of this Agreement by giving Subscriber at least 30 days prior written or online notice. Any other amendment must be in writing and signed by both parties.

**12. Force Majeure.** West's performance under this Agreement is subject to interruption and delay due to causes beyond its reasonable control, such as acts of God, acts of any government, war or other hostility, civil disorder, the elements, fire, explosion, power failure, equipment failure, industrial or labor dispute, inability to obtain necessary supplies and the like.

**13. Notices.** Except as otherwise provided herein, all notices must be in writing to West at 610 Opperman Drive, P.O. Box 64833, St. Paul, Minnesota 55164-1803, Attention: Customer Service, and to Subscriber at the address set forth below.

**14. General Provisions.** This Agreement will be governed by and construed under the law of the state of Minnesota, U.S.A. without regard to conflicts of law provisions. The parties agree that the state and federal courts sitting in Minnesota will have exclusive jurisdiction over any claim arising out of this Agreement and each party consents to the exclusive jurisdiction of such courts. Neither this Agreement nor any part or portion may be assigned, sublicensed or otherwise transferred by Subscriber without West's prior written consent. Should any provision of this Agreement be held to be void, invalid, unenforceable or illegal by a court, the validity and enforceability of the other provisions will not be affected thereby. Failure of any party to enforce any provision of this Agreement will not constitute or be construed as a waiver of such provision or of the right to enforce such provision. The headings and captions contained in this Agreement are inserted for convenience only and do not constitute a part of this Agreement. West, as used herein, applies to West Publishing Corporation, Thomson Legal & Regulatory Applications Inc., West Services, Inc. and their affiliates.

**15. Ideas and Concepts.** Any and all title, ownership rights, and intellectual property rights concerning any ideas, concepts, suggestions, materials and the like that Subscriber provides to West regarding Westlaw, westlaw.com or Westlaw Software shall become the exclusive property of West and may be used for its business purposes in its sole discretion without any payment, accounting, remuneration or attribution to Subscriber.

**SUBSCRIBER**

Signature \_\_\_\_\_

Name (please print) \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Firm Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Contact \_\_\_\_\_

Telephone \_\_\_\_\_

Sales Representative \_\_\_\_\_

**Westlaw PASSWORDS (optional)**

- If you need to list additional names, please attach a list.

NAME	PASSWORD		
	ISSUE	YES	NO
Please Print (last, first)			

Contact: \_\_\_\_\_

E-mail address for Westlaw password delivery: \_\_\_\_\_



# Legal Document—Retain for Your Records

## West Software License Agreement

### LICENSOR:

#### WEST GROUP

620 Opperman Drive

P.O. Box 64833

St. Paul, MN 55164-0833, U.S.A.

### Notice to User:

This is a legal document between you (User) and West Group (West) contracting on behalf of its affiliated companies. It is important that you read this document before using the West-provided software (Software) and any accompanying documentation (Documentation). By using the Software and taking such other action as may be referenced in this License Agreement as constituting acceptance (if any), you agree to be bound by the terms of this Agreement. If you do not agree, you are not licensed to use the Software, and you must return any tangible copies of the Software in your possession or control to West.

This Software is distributed by West for use in connection with various West products and services (West Services) and to allow you to access compatible data. It is protected by copyright. You acknowledge and understand that this Agreement does not grant you any right of access to West Services or to compatible data. All access to and use of the West Services by means of the Software, including any charges for such access and use, will be governed by the terms of the applicable West user agreement (West User Agreement).

### Software License

**License Grant.** West grants User a non-exclusive, non-transferable, limited license to use the Software at its licensed site.

**Copying.** The license permits User to make that number of copies of the Software necessary for use at its licensed site. As to CD-ROM software (including, but not limited to PREMISE® Research and LawDesk®), a "site" means all CD-ROM software-compatible equipment having the same operating system at a single User location. As to all other West Software, a "site" means all personal computers, servers or minicomputers (including networked systems) with the same operating system platform at a single location or at different locations that are connected by a single networked system (i.e., any combination of two or more terminals that are electronically linked and capable of sharing the use of a single software product). In addition, User's personnel who work at or are assigned to the licensed site may use the Software on personal computers located off-site. Each copy made by User must include the copyright/proprietary rights notice(s) embedded in and affixed to the Software. All other copying is prohibited.

**Other Restrictions.** User may not loan, lease, distribute or transfer the Software or copies to third parties, nor reverse engineer or otherwise attempt to discern the source code of the Software. Further, User may not reproduce all or any portion of the Software (except as expressly permitted in this Agreement) or the Documentation. User agrees to notify its employees and agents who may have access to the Software of the restrictions contained in this Agreement and to ensure their compliance with these restrictions.

**Title.** Title to the Software is not transferred to User. Ownership of all copies of the Software and of copies made by User is vested in West and other software owners, subject to the rights of use granted to User in this Agreement.

### Limited Warranty

**Limited Warranty.** West warrants that the medium, if any, upon which the Software is provided by West to User will be free from defects in material and workmanship under normal use for a period of 60 days from the date of User's receipt of the Software.

**DISCLAIMER. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, THE SOFTWARE AND ANY DOCUMENTATION ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF PERFORMANCE OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. USER BEARS ALL RISK RELATING TO QUALITY AND PERFORMANCE OF THE SOFTWARE.**

The performance of the Software varies with various manufacturers' equipment with which it is used. West does not warrant the level of performance of the Software or that earlier versions superseded by new versions (whether or not distributed to User) will continue to be capable of access to and use with West Services. West does not warrant that the Software or the functions contained in the Software will meet User's requirements, operate without interruption or be error-free.

**Limitation of Liability.** User's exclusive remedy for breach by West of its limited warranty shall be replacement of any defective medium upon its return to West within the warranty period or, if West is unable to provide a replacement that is free of defect, a refund of the license fee paid by User with respect to such medium. **In no event will West be liable for any lost profits or other damages, including direct, indirect, incidental, special, consequential or any other type of damages, arising out of this Agreement or the use of the Software licensed hereunder, even if West has been advised of the possibility of such damages.**

### General Provisions

**Term and Termination.** This Agreement and User's subscription to the Software may be terminated (i) by User by giving West written notice of termination, (ii) by West, at its option, if User commits a material breach of this Agreement, or (iii) upon termination of the West User Agreement, if any. This Agreement must also terminate immediately upon User's receipt of a new version of the Software. Upon any termination of this Agreement, User must cease all use of the Software, destroy all copies then in its possession or control and take such other actions as West may reasonably request to ensure that no copies of the Software remain in its possession or control.

**Effect of Agreement.** This Agreement together with any applicable West User Agreement embodies the entire understanding between the parties with respect to, and supersedes any prior understanding or agreement, oral or written, relating to, the Software.

**Governing Law.** This Agreement will be governed by and construed under the laws of the state of Minnesota, U.S.A.

**General Provisions.** Neither this Agreement nor any part or portion hereof may be assigned, sublicensed or otherwise transferred by User. Should any provision of this Agreement be held to be void, invalid, unenforceable or illegal by a court, the validity and enforceability of the other provisions will not be affected thereby. Failure of a party to enforce any provision of this Agreement does not constitute and should not be construed as a waiver of such provision or of the right to enforce such provision.

**Export Laws.** The Software, the Software technology and its related documentation may not be exported or reexported in violation of the U.S. Export Administration Act and its implementing regulations.

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