

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

November 19, 2009

CHANGE NOTICE NO. 4
 TO
 CONTRACT NO. 071B6200219
 between
 THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF VENDOR Compuware Corporation One Campus Martius Detroit, MI 48226 Email: TIMOTHY.THEWES@Compuware.com	TELEPHONE 313-227-8087 Timothy Thewes
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 373-3993 Dale N. Reif
Contract Compliance Inspector: Diana Quintero Software and Maintenance	
CONTRACT PERIOD: From: April 1, 2006 To: March 31, 2011	
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>	
MISCELLANEOUS INFORMATION:	

NATURE OF CHANGE(S):

Effective immediately, this contract is EXTENDED to March 31, 2011 and INCREASED by \$637,778.38. All other pricing, terms and conditions remain the same.

AUTHORITY/REASON(S):

Per vendor and agency agreement and approval of DMB Purchasing Operations and per the approval of the State Administrative Board on November 17, 2009.

INCREASE: \$637,778.38

TOTAL REVISED CONTRACT VALUE: \$6,201,304.33

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 28, 2007

CHANGE NOTICE NO. 2
TO
CONTRACT NO. 071B6200219
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR Compuware Corporation One Campus Martius Detroit, MI 48226 Email: TIMOTHY.THEWES@Compuware.com	TELEPHONE 313-227-8087 Timothy Thewes
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 373-3993 Dale N. Reif
Contract Compliance Inspector: Diana Quintero Software and Maintenance	
CONTRACT PERIOD: From: April 1, 2006 To: March 31, 2009	
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>	
MISCELLANEOUS INFORMATION: The terms and conditions of this Contract are contained in the attached License Agreement. Est. Contract Value: \$1,125,196.00	

NATURE OF CHANGE(S):

Effective immediately, this contract is **INCREASED** by **\$987,120.00**. All other pricing, terms and conditions remain the same.

AUTHORITY/REASON(S):

Per vendor and agency agreement and approval of **DMB Purchasing Operations**.

INCREASE: \$987,120.00

TOTAL REVISED CONTRACT VALUE: \$5,012,316.00

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

December 22, 2006

CHANGE NOTICE NO. 1
TO
CONTRACT NO. 071B6200219
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR Compuware Corporation One Campus Martius Detroit, MI 48226	TELEPHONE 313-227-7332 Steve Scheidt
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 373-3993 Dale N. Reif
Contract Compliance Inspector: Diana Quintero Software and Maintenance	
CONTRACT PERIOD: From: April 1, 2006 To: March 31, 2009	
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>	
MISCELLANEOUS INFORMATION: The terms and conditions of this Contract are contained in the attached License Agreement. Est. Contract Value: \$1,125,196.00	

NATURE OF CHANGE(S):

Effective immediately, this contract is **INCREASED** by **\$2,900,000.00** and Vantage software and implementation assurance services are added to the contract. The terms and conditions are amended to include the attached Section 2.900 Delivery and Acceptance of Deliverables. All other pricing, terms and conditions remain the same.

AUTHORITY/REASON(S):

Per vendor and agency agreement and approval of DMB Purchasing Operations.

INCREASE: \$2,900,000.00

TOTAL REVISED CONTRACT VALUE: \$4,025,196.00

This Section shall only apply to the acceptance of implementation services and not to software licensing.

2.900 Delivery and Acceptance of Deliverables

2.901 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.

2.902 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.

2.903 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.

2.904 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 2.903**, 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 2.903(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.

2.905 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.

2.906 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.

2.907 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.

2.908 Final Acceptance

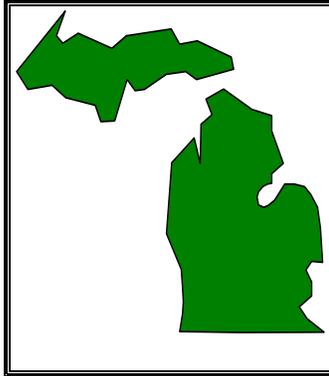
Unless otherwise stated in the Statement of Work or Purchase Order, "Final Acceptance" of each Deliverable shall occur when each Deliverable/Service has been approved by the State following the State Review Periods identified in **Sections 2.900-2.907**. Payment will be made for Deliverables installed 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.

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. 071B6200219
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF VENDOR Compuware Corporation One Campus Martius Detroit, MI 48226	TELEPHONE 313-227-7332 Steve Scheidt VENDOR NUMBER/MAIL CODE BUYER/CA (517) 373-3993 Dale N. Reif
Contract Compliance Inspector: Diana Quintero <p style="text-align: center;">Software and Maintenance</p>	
CONTRACT PERIOD: From: April 1, 2006 To: March 31, 2009	
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>	
MISCELLANEOUS INFORMATION: The terms and conditions of this Contract are contained in the attached License Agreement. Est. Contract Value: \$1,125,196.00	

<p>FOR THE VENDOR:</p> <p>_____</p> <p style="text-align: center;">Firm Name</p> <p>_____</p> <p style="text-align: center;">Authorized Agent Signature</p> <p>_____</p> <p style="text-align: center;">Authorized Agent (Print or Type)</p> <p>_____</p> <p style="text-align: center;">Date</p>	<p>FOR THE STATE:</p> <p>_____</p> <p style="text-align: center;">Signature Elise Lancaster</p> <p>_____</p> <p style="text-align: center;">Name Director</p> <p>_____</p> <p style="text-align: center;">Title</p> <p>_____</p> <p style="text-align: center;">Date</p>
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**STATE OF MICHIGAN
Department of Management and Budget
Purchasing Operations**

And

**Michigan Department of Information Technology
Bureau of Strategic Policy**

Master Contract

Contract No. 071B6200219

Compuware Corporation

Buyer Name: Dale N. Reif
Telephone Number: 517 373-3993
E-Mail Address: reifd@michigan.gov



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**Article 1 – Statement of Work (SOW)****1.0 Project Identification****1.001 PROJECT REQUEST**

Reporting to the Michigan Department of Information Technology (MDIT), and pursuant to issued Purchase Orders (PO's), Compuware Corporation (Contractor) will provide the software identified in Appendix A to all agencies of the State of Michigan (State), together with maintenance for the software purchased.

1.002 RESERVED**1.1 Scope of Work and Deliverables****1.101 IN SCOPE**

Contractor will provide the following:

1. Software products listed in Appendix A and as the list may be amended.
2. Maintenance and support for software purchased by the State.
3. Continuation of current software maintenance provided for Contractor products in use by the State.
4. Billing
5. Reporting to the State

1.102 OUT OF SCOPE

Software development, customization, enhancements and/or modifications are not within the scope of this SOW. Enhancements altering the functionality, and/or adding new functions not related to a maintenance modification are not within the scope of this SOW.

Purchase of hardware and peripherals is not within the scope this SOW.

1.103 TECHNICAL ENVIRONMENT

Information regarding the State's information technology architecture and standards may be found at: <http://www.michigan.gov/dit/0,1607,7-139-34305---,00.html> . Individual agency Purchase Orders may provide detailed information on the agency's specific technical environment.

1.104 WORK AND DELIVERABLE

Contractor will provide its software products meeting the following requirements:

A. Software

1. Contractor must provide a detailed description of the infrastructure requirements for the purchased software. For example, the database, operating systems (including versions), and hardware required for maximum effectiveness of the software.
2. Discontinuation of any products by the Contractor must be communicated to MDIT in writing within five (5) business days of Contractor's decision to discontinue. In such instances, Contractor will work with MDIT to identify and implement alternative options that maintain or reduce costs associated with a replacement software package.
3. If a requested product version is no longer available, Contractor will identify the next available product version for the State's consideration.
4. All software will be kept current according to Contractor support announcements. At the start of each calendar quarter, Contractor shall provide notice to MDIT of all upgrades and changes to the software that are planned for the following quarter.

B. Ordering

1. Orders will be placed by written Purchase Order.
2. Contractor will have both a local telephone number within the (517) area code or a toll-free (800) number with at least one Customer Service Representative available during the State's operating hours.



- a. All service representatives will have access to information to provide immediate response to inquiries concerning the status of orders (shipped or pending), delivery information, back-order information, State contract pricing, contracted product offerings/exclusions, contract compliance requirements, and general product information.
- b. Representatives will be available by phone, fax, or email (local and 800 number preferred).
- 3. Contractor will permit multiple delivery locations on a single purchase order.
- 4. Contractor will honor all prices for a ninety (90) day period after the placement of the order, if delivery has not occurred within that timeframe.

C. Delivery Conditions

- 1. Software and license agreements shall be delivered within five (5) days after receipt of a purchase order.
- 2. All items shall be priced FOB destination to the specified location.
 - a. The term FOB destination shall mean delivered and accepted at the identified destination receiving site and with all charges for transportation paid by the Contractor.
 - b. "Accepted" means delivered as specified in a Purchase Order for purchase of Software. Mere acknowledgement by State personnel of the delivery or receipt of the Products shall not be deemed or construed as accepted.
- 3. Contractor will pay title and risk of loss or damage charges while product is in transit.
- 4. The State, upon prior approval, will pay the cost of special shipping and handling required for any rush delivery.
 - a. Rush delivery that occurs as a result of Contractor's error will be free of charge.
 - b. Rush delivery is defined as delivering software by next business morning.
- 5. Contractor shall prepay special handling orders, pre-approved by the State, that incur extra charges. Such additional charges shall be entered as a separate item for payment on the invoice.
- 6. Contractor will deliver or ship software to any location requested by the State, including other entities holding contracts with the State so that the software can be configured and installed on hardware systems for delivery to the State.
- 7. A packing label will be on each box and include the following items, visible on the outside of the box:
 - a. Purchaser's Name
 - b. Purchase Order (PO) Number
 - c. License number (if applicable)
 - d. Address
 - e. Department and floor
 - f. Contact
 - g. Telephone number
 - h. Mail code
- 8. A packing slip will also be included which will include information such as:
 - a. PO Number
 - b. Line item description
 - c. Quantity ordered
 - d. Quantity included in shipment
 - e. Any back order items and date they will be filled
 - f. Unit Price
- 9. If Contractor provides a web site from which the State may download the software, Contractor and the State shall agree on a protocol to be followed for such download by authorized State staff.



- D. License Tracking
Contractor will provide information in the format specified by the State for tracking license renewals.
- E. Documentation
Contractor shall provide on an ongoing basis updated documentation to reflect software, configuration and procedural changes, to include:
- a. Help Desk and user documentation on any new software features or enhancements with software upgrades.
 - b. System documentation to the State, including configuration and installation information. Contractor will provide administration and user documentation for their software.
 - c. Documentation configuration management (either in hard copy or electronic media).
- F. Warranties
1. Contractor shall provide its standard warranty with any software provided.
 2. Products will be warranted from the date of installation.
 3. Contractor shall provide the following services during the warranty period (including unlimited telephonic support and all necessary travel and labor) without additional charge to maintain the software in accordance with the requirements:
 - a. Promptly notify MDIT of any defects or malfunctions in the software or documentation learned from any source, correct any such defects or malfunctions or provide a workaround until corrected within 10 business days of knowledge of such defect or malfunction and provide the State with corrections of same, at no additional cost.
 - b. In the event the State identifies any defect or non-conformance to requirements, Contractor, at Contractor's sole expense, shall provide all services required to correct the defect or shall replace it, so that it functions as warranted.
 - c. Contractor shall be solely responsible for the shipping cost to return any software to Contractor.
- G. Maintenance
1. Contractor shall provide maintenance for their software
 - a. Maintenance is defined as providing replacement copies or correction services to correct any error, malfunction or defect in the software; updated versions of the software that are improvements, extensions, maintenance releases and updates, error corrections or other changes that are logical improvements or extensions of the original software supplied to the State; documentation updates; and access to remote technical support.
 - b. Maintenance does not include professional services to modify, customize or enhance software functionality to meet specific State business requests.
 2. Contractor must have the ability to provide maintenance releases for software fixes or patches, and provide the ability to uninstall problematic maintenance releases.
 3. Contractor shall ensure the continuation of maintenance for its software currently in use by the State consistent with the levels of service currently provided to the State.
 4. Maintenance Dispatch Procedures - Contractor shall respond to requests for maintenance service from the State staff identified on the Purchase Order.
 5. Dispatch System/ Record
 - a. Contractor shall utilize an agreed upon maintenance record/log for reporting all maintenance services performed.
 - b. Problem tickets must be opened, uniquely identified, and tracked to closure.
 - c. MDIT and the Contractor will jointly agree on a mechanism to keep the State's Call Center advised of software issues affecting availability and/or performance.



- 6. Response Time - Contractor will respond to all urgent requests for Software Maintenance Services within 4 hours of notification. All other requests are normally responded to within 24 hours of notification.
- 7. The Contractor classifies problems as follows:

Priority Assigned	General Description	Callback Time
4	<u>Minor Issue</u> <u>Requests for information, interface discrepancy or cosmetic suggestion, or defect in obscure product technology.</u>	2 business days
3	<u>Problem Is Not Causing a Product or System Failure</u> <u>Inaccurate functionality as described, incorrect interface descriptions, inaccurate documentation, or defect in minor functionality.</u>	8 business hours
2	<u>Major Issue</u> <u>Explicitly documented function is not available or missing; software cannot be used as advertised or documented; obvious interface issues; obscure, difficult to reproduce, or infrequent crashes; or documentation defect has caused a severe error, installation failure, or data corruption.</u>	4 business hours
1	<u>Major Functional Failure or System Down</u> <u>Crashes, hangs, or data loss occurred; customer cannot access product; error caused product or system to fail; constant restarting is required; or product cannot be installed.</u>	1 hour

H. Service Levels

Contractor’s services during the term of the contract shall be measured using the following metrics:

- a. All orders shall have a Fill Rate of 100%
- b. Report Timeliness and Completeness (% in 5 days of due date) – 100%
- c. Invoice accuracy (%) – 100%
- d. Invoice timeliness (% within 5 days of agreed invoice receipt date) – 100%

1.2 Roles and Responsibilities

1.201 CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES

Contractor will provide qualified staff and materials required to accomplish the services described in Article 1.104 and other such roles and responsibilities as mutually agreed upon.

Contractor shall provide a dedicated Contract Manager, the single-point-of-contact (and a backup). The Contract Manager will be available during the State’s operating hours. MDIT reserves the right to require a change in Contractor’s then-current Contract Manager if the assigned Contract Manager is not, in the opinion of MDIT, adequately serving the needs of the State. The Contract Manager’s responsibilities will include:

- a. Supporting the management of the Contract,
- b. Facilitating dispute resolution.
- c. Advising MDIT of performance under the terms and conditions of the Contract.
- d. Be available by phone, fax, or email (local and 800 number preferred).



1.202 STATE STAFF, ROLES, AND RESPONSIBILITIES

MDIT is responsible for the administration of the services within the contract. MDIT shall provide a program manager as a contact for all issues pertaining to the execution of services under the contract. As of the effective date for contract commencement the MDIT Program Manager shall be:

Beth Dean
 Michigan Dept. of Information Technology
 Lansing, MI 48913
 Phone: 517- 517-373-8646
 E-mail: deanb2@michigan.gov

1.203 RESERVED

1.3 Project Plan

1.301 RESERVED

1.302 REPORTS

Contractor shall provide various reports, when requested by the State, to include, at a minimum:

- a. Monthly reports on the maintenance logs and reported errors, failures and problems.
- b. Quarterly reports on activities, summarizing issues encountered, and advising of immediate needs.
- c. Contract Usage Reporting - Contractor will report, within ten (10) days of the end of each month, to MDIT all purchases made from this contract. At a minimum, the report shall include:
 - 1. Contract number,
 - 2. Product name,
 - 3. Product description,
 - 4. Version number,
 - 5. License numbers,
 - 6. State unit price,
 - 7. PO number,
 - 8. PO date,
 - 9. Quantity, and
 - 10. Agency name, division, section, and contact name.
 - 11. Date shipped.
- d. Rolling report of software renewal notice to be provided on the following schedule before renewal date:
 - 1. Six (6) months prior
 - 2. Three (3) months prior
 - 3. One (1) month prior

1.4 RESERVED

1.401 RESERVED

1.402 RESERVED

1.403 RESERVED

1.5 Acceptance

Please see Section 1.104.

1.501 RESERVED

**1.502 RESERVED****1.6 Compensation and Payment**

Pricing for the Contract is set forth in Attachment A. A discount rate of 20% or GSA pricing whichever is greater shall be applied to all product listed in Appendix A.

Annual Maintenance or Support Changes:

There shall be no increases to the Contractor's charges stated in Attachment A from the effective date of this contract. Thereafter, should the Contract be renewed or extended, Contractor may request an increase of its charges once a year upon ninety (90) days prior written notice to the State, and the State's concurrence.

Competitive Pricing

Contractor warrants and agrees that each of the charges, economic or product terms or warranties granted to the State pursuant to this Contract are comparable to or better than the equivalent charge, economic or product term or warranty being offered to any commercial or government customer of Contractor. If Contractor enters into any arrangements with another customer of Contractor to provide software or maintenance services under more favorable prices, then this Contract shall be deemed amended as of the date of such other arrangements to incorporate those more favorable prices, and Contractor shall immediately notify the State of such change.

Invoice and Payment

Contractor will submit invoices matching the State PO for each product order. Maintenance invoices will be submitted annually. Invoices will comply with MDIT specifications and will include, at a minimum, detail of charges by:

- Agency and
- Account Codes.

1.7 RESERVED



Article 2 – General Terms and Conditions

2.0 Introduction

2.001 GENERAL PURPOSE

The Contract is for software license agreement and maintenance as detailed in the Attachments for the State of Michigan. Orders will be issued directly to the Contractor by various State Agencies on the Purchase Order Contract Release Form.

2.002 ISSUING OFFICE AND CONTRACT ADMINISTRATOR

The Contract is issued by Purchasing Operations, State of Michigan, Department of Management and Budget, hereinafter known as Purchasing Operations, for the Department of Information Technology, hereinafter known as MDIT. Where actions are a combination of those of Purchasing Operations and the MDIT, the authority will be known as the State.

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

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

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

Department of Management and Budget
 Purchasing Operations
 Attn: Dale N. Reif
 2nd Floor, Mason Building
 P.O. Box 30026
 Lansing, Michigan 48909
 (517) (241-1646)
 (reifd@michigan.gov)

2.003 NOTICE

Any notice given to a party under this Contract must be written and shall be deemed effective, if addressed to such party as addressed below upon (i) delivery, if hand delivered; (ii) receipt of a confirmed transmission by facsimile if a copy of the notice is sent by another means specified in this section; (iii) the third (3rd) Business Day after being sent by U.S. mail, postage pre-paid, return receipt requested; or (iv) the next Business Day after being sent by a nationally recognized overnight express courier with a reliable tracking system.

State of Michigan
 Department of Management and Budget
 Purchasing Operations
 Attention:Dale N. Reif
 PO Box 30026
 Lansing, Michigan 48909



With a copy to:

State of Michigan
Department of Information Technology
Attention: Joel Storchan
Romney Building
111 S. Capitol
Lansing, Michigan 48909

2.004 CONTRACT TERM

The term of this Contract will be for three (3) years and will commence with the issuance of a Contract. This will be approximately 4-1-06 through 3-31-2009.

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

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

Written notice will be provided to the Contractor within 90 days, provided that the State gives the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the Government to an extension. If the Government exercises this option, the extended contract shall be considered to include this option clause.

2.005 GOVERNING LAW

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

2.006 APPLICABLE STATUTES

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

- MI Uniform Commercial Code (MIUCC) MCL 440. (All sections unless otherwise altered by agreement)
- MI OSHA MCL §§ 408.1001 – 408.1094
- Freedom of Information Act (FIOA) MCL §§ 15.231, et seq.
- Natural Resources and Environmental Protection Act MCL §§ 324.101, et seq.
- MI Consumer Protection Act MCL §§ 445.901 – 445.922
- Laws relating to wages, payments of wages, and fringe benefits on state projects MCL §§ 408.551 – 408.558, 408.471 – 408.490, 1965 PA 390.
- Department of Civil Service Rules and regulations
- Elliot Larsen Civil Rights Act MCL §§ 37.2201, et seq.
- Persons with disabilities Civil Rights Act MCL §§ 37.1101, et seq.
- MCL §§ 423.321, et seq.
- MCL § 18.1264 (law regarding debarment)
- Davis-Bacon Act (DBA) 40 USCU §§ 276(a), et seq.



Contract Work Hours and Safety Standards Act (CWHSSA) 40 USCS § 327, et seq.
 Business Opportunity Act for Persons with Disabilities MCL §§ 450.791 – 450.795
 Rules and regulations of the Environmental Protection Agency
 Internal Revenue Code
 Rules and regulations of the Equal Employment Opportunity Commission (EEOC)
 The Civil Rights Act of 1964, USCS Chapter 42
 Title VII, 42 USCS §§ 2000e et seq.
 The Americans with Disabilities Act (ADA), 42 USCS §§ 12101 et seq.
 The Age Discrimination in Employment Act of 1967 (ADEA), 29 USCS §§ 621, 623 et seq.
 The Old Workers Benefit and Protection Act of 1990 (OWBPA), 29 USCS §§ 626, et seq.
 The Family Medical Leave Act of 1993 (FMLA), 29 USC §§ 651 et seq.
 The Fair Labor Standards Act (FLSA), 29 USC §§ 201 et seq.
 Pollution Prevention Act of 1990 (PPA) 42 U.S.C. §13106
 Sherman Act, 15 U.S.C.S. § 1 et seq.
 Robinson-Patman Act, 15 U.S.C.S. § 13 et. seq.
 Clayton Act, 15 U.S.C.S. § 14 et seq.

2.007 RESERVED

2.008 HEADINGS

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

2.009 MERGER

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

2.010 SEVERABILITY

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

2.011 SURVIVORSHIP

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

2.012 NO WAIVER OF DEFAULT

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

2.013 PURCHASE ORDERS

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

Purchasing Operations has given the State Departments approval to make payments for commodities purchased from this contract through Direct Voucher. For this reason, the Contractor may be asked to reference the Blanket Purchase Order/Contract number rather than a Purchase Order Number when invoicing for payment.



2.014 LICENSE AGREEMENT (LA)

The License Agreement #151599 between The State and Contractor (LA) attached hereto as Attachment A forms an integral part of this Contract and further identifies Terms and Conditions related to Software licenses, Maintenance and Technical Support. Where “Licensee” is referenced within the LA, each reference shall also mean the State as defined in this Contract. If there is a conflict between the Contract and Attachment A, this Contract will take precedence.

Notwithstanding anything contained in this Contract, the State and Contractor understand and agree that any State orders placed with Contractor prior to the effective date of this Contract shall be subject to the terms and conditions of the applicable agreement in place between the State and Contractor at the time of such order and that any prior Maintenance or Software licenses shall become a part of this Contract beginning the effective date of this Contract.

Notwithstanding that contained in section 3 of the LA, payment of fees is net thirty (30) days subject to a fifteen-day grace period that is not subject to late payment fees.

2.1 Vendor/Contractor Obligations

2.101 ACCOUNTING RECORDS

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

2.102 NOTIFICATION OF OWNERSHIP

The Contractor shall make the following notifications in writing:

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

The Contractor shall:

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



2.103 SOFTWARE COMPLIANCE

The vendor warrants that all software for which the vendor either sells or licenses to the State of Michigan and used by the State is warranted pursuant to the LA and section 2.507 of this Contract.

2.104 IT STANDARDS

1. 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://michigan.gov/dit>.
2. PM METHODOLOGY STANDARDS. The State has adopted a standard documented Project Management Methodology (PMM) for use on all Information Technology (IT) based projects. This policy is referenced in the document titled “Project Management Methodology” – DMB Administrative Guide Procedure 1380.02 issued June 2000. Vendors may obtain a copy of this procedure, as well as the State of Michigan Project Management Methodology, from the Department of Information Technology’s website at <http://www.michigan.gov/projectmanagement>.

The contractor shall use the State’s PPM to manage State of Michigan Information Technology (IT) based projects. The Requesting agency will provide the applicable documentation and internal agency processes for the methodology. If the vendor requires training on the methodology, those costs shall be the responsibility of the vendor, unless otherwise stated.

3. ADHERENCE TO PORTAL TECHNOLOGY TOOLS. The State of Michigan, Department of Information Technology, has adopted the following tools as 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

Vendors must use the Portal Technology Tools to implement web content management and deployment efforts for agencies. 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 the Department of Information Technology, Enterprise Application Services Office, e-Michigan Web Development team.

Under special circumstances vendors that are compelled to use alternate tools must submit an exception request to the Department of Information Technology, Enterprise Application Services Office, e-Michigan Web Development team, for evaluation and approval of each alternate tool prior to proposal evaluation by the State. A signed SOW between Contractor and the State is also an acceptable exception.

2.105 RESERVED

2.106 RESERVED

2.107 RESERVED

2.108 RESERVED



2.109 RESERVED

2.2 Contract Performance

2.201 RESERVED

2.202 RESERVED

2.203 RESERVED

2.204 RESERVED

2.205 ELECTRONIC PAYMENT AVAILABILITY

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

2.206 RESERVED

2.3 Contract Rights and Obligations

2.301 INCURRING COSTS

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

2.302 CONTRACTOR RESPONSIBILITIES

The Contractor will be required to assume responsibility for all contractual activities, whether or not that Contractor performs them. Further, the State will consider the Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the anticipated Contract.

2.303 ASSIGNMENT AND DELEGATION

The Contractor shall not have the right to assign this Contract, to assign its rights under this contract, or delegate any of its duties or obligations under the Contract to any other party (whether by operation of law or otherwise), without the prior written consent of the State. Any purported assignment in violation of this Section shall be null and void. Further, the Contractor may not assign the right to receive money due under the Contract without the prior written consent of the Director of Purchasing Operations.

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

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

2.304 TAXES

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

Federal Excise Tax: The State of Michigan may be exempt for Federal Excise Tax, or such taxes may be reimbursable, if articles purchased under this Contract are used for the State's exclusive use. Certificates exclusive use for the purposes of substantiating a tax-free, or tax-reimbursable



sale will be sent to the Contractor upon request. If a sale is tax exempt or tax reimbursable under the Internal Revenue Code, prices shall not include the Federal Excise Tax.

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

2.305 INDEMNIFICATION

General Indemnification

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

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

Patent/Copyright Infringement Indemnification

To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State, its employees and agents from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against the State to the extent that such action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied and created 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 t, software infringes any United States or foreign patent, copyright, or trade secret or trademark of any person or entity, which right is enforceable under the laws of the United States. In addition, should the software or the operation thereof, become or in the Contractor's opinion be likely to become the subject of a claim of infringement, the Contractor shall at the Contractor's sole expense (i) procure for the State the right to continue using the software or, if such option is not reasonably available to the Contractor, (ii) replace or modify the same with software 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 for the infringing software.

The foregoing shall be the State's sole and exclusive remedy for any infringement covered under this provision. Contractor will not indemnify State, however, if the claim of infringement is caused by (1) State's misuse or modification of the Deliverable or Software; (2) State's failure to use corrections or enhancements of the Software made available by Contractor; (3) State's distribution, marketing or use of the Software outside of it's organization for the benefit of third parties; or (4) information, direction, specification, or materials provided to Contractor by State or any third party except for third party subcontractors and vendors of Contractor; (5) the State's use of the Software with other software or hardware or service or other product or item if without such use the Software would be non-infringing; (6) the State's use of open source technology either provided by Contractor or otherwise received by the State; provided, however, that if the open source technology becomes or, in the Contractor's opinion, is likely to become the subject of a claim of infringement, the Contractor shall, at the Contractor's sole expense, provide the State with one of the remedies listed above in the immediately preceding paragraph this Section.

Code Indemnification

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

Indemnification Obligation Not Limited

In any and all claims against the State of Michigan, or any of its agents or employees, by any employee of the Contractor or any of its subcontractors, the indemnification obligation under the Contract shall not be limited in any way by the amount or type of damages, compensation or benefits payable by or for the Contractor or any of its subcontractors under worker's disability compensation acts, disability benefits acts, or other employee benefits acts. This indemnification clause is intended to be comprehensive. Any overlap in sub clauses, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other sub clause.

Continuation of Indemnification Obligation

The duty to indemnify will continue in full force and affect not withstanding the expiration or early termination of the Contract with respect to any claims based on facts or conditions, which occurred prior to termination.



Indemnification Procedures

The procedures set forth below shall apply to all indemnity obligations under this Contract.

- (a) After receipt by the State of notice of the action or proceeding involving a claim in respect of which it will seek indemnification, the State shall promptly notify Contractor of such claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to so notify Contractor shall relieve Contractor of its indemnification obligations except to the extent that Contractor can demonstrate damages attributable to such failure. Within ten (10) days following receipt of written notice from the State relating to any claim, Contractor shall notify the State in writing whether Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying Contractor of a claim and prior to the State receiving Contractor's Notice of Election, the State shall be entitled to defend against the claim, at Contractor's expense, and Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during such period.
- (b) If Contractor delivers a Notice of Election relating to any claim: (i) the State shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in the handling of such claim and to monitor and advise the State about the status and progress of the Defense; (ii) Contractor shall, at the request of the State, demonstrate to the reasonable satisfaction of the State, Contractor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) Contractor shall periodically advise the State about the status and progress of the defense and shall obtain the prior written approval of the State (not to be unreasonably withheld by the State) before entering into any settlement of such claim or ceasing to defend against such claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State shall have the right, at its own expense, to control the defense of that portion of such claim involving the principles of Michigan governmental or public law. Notwithstanding the foregoing, the State may retain control of the defense and settlement of a claim by written notice to Contractor given within ten (10) days after the State's receipt of Contractor's information requested by the State pursuant to clause (ii) of this paragraph if the State determines that Contractor has failed to demonstrate to the reasonable satisfaction of the State Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State of Michigan, or any of its subdivisions pursuant to this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State pursuant to this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.
- (c) If Contractor does not deliver a Notice of Election relating to any claim of which it is notified by the State as provided above, the State shall have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of Contractor. If it is determined that the claim was one against which Contractor was required to indemnify the State, upon request of the State, Contractor shall promptly reimburse the State for all such reasonable costs and expenses.



2.306 LIMITATION OF LIABILITY

The Contractor’s liability for damages to the State shall be limited to the Contract value 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; or to Contractor’s indemnification obligations relative to the two foregoing exclusions of this paragraph; or to court costs or attorney’s fees awarded by a court in addition to damages after litigation based on this Contract.

2.307 CONTRACT DISTRIBUTION

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

2.308 FORM, FUNCTION, AND UTILITY

If the Contract is for use of more than one State agency and if the goods provided under this Contract do not meet the form, function, and utility required by a State agency, that agency may, subject to State purchasing policies, procure the good or service from another source.

2.309 ASSIGNMENT OF ANTITRUST CAUSE OF ACTION

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

2.310 RESERVED

2.311 RESERVED

2.312 RESERVED

2.313 PROPRIETARY RIGHTS

A. Software Ownership

Ownership of Work Product by State.

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

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



Cross-License.

License to the Contractor. The State grants to the Contractor, the royalty-free, world-wide, non-exclusive right and license under any Deliverable now or in the future owned by the State, or with respect to which the State has a right to grant such rights or licenses, to the extent required by the Contractor to market the Deliverables and exercise its full rights in the Deliverables, including, without limitation, the right to make, use and sell products and services based on or incorporating such Deliverables.

License to the Contractor. The State grants to the Contractor, the royalty-free, world-wide, non-exclusive right and license under any Deliverable and/or Derivative Work now or in the future owned by the State, or with respect to which the State has a right to grant such rights or licenses, to the extent required by the Contractor to market the Deliverables and/or Derivative Work and exercise its full rights in the Deliverables and/or Derivative Work, including, without limitation, the right to make, use and sell products and services based on or incorporating such Deliverables and/or Derivative Work.

Preexisting Works. In the event that any Deliverable constitutes a Derivative Work of any preexisting work, the bidder shall ensure that their proposal pertaining to such Deliverable so indicates by references to (1) the nature of such preexisting work, (2) its owner, (3) any restrictions or royalty terms applicable to the Bidder's use of such preexisting work or State's marketing of the Deliverable as a Derivative Work, and (4) the source of Bidder's authority to employ the preexisting work in the preparation of the Deliverable.

Unless otherwise specifically agreed to by the State, before initiating the preparation of any Deliverable that is a Derivative of a preexisting work, the Contractor shall cause the State to have and obtain the irrevocable, nonexclusive, worldwide, royalty-free right and license to (1) use, execute, reproduce, display, perform, distribute internally or externally, sell copies of, and prepare Derivative Works based upon all preexisting works and Derivative Works thereof, and (2) authorize or sublicense others from time to time to do any or all of the foregoing.

Software 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 make copies of the Software in the course of routine backups of hard drive(s) for the purpose of recovery of hard drive contents, or may relocate the Software site-wide as long as the licensed Software remains within the parameters of the quantities licensed.

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.

B. *Source Code Escrow*

In the event of a bankruptcy proceeding resulting in the liquidation of all or substantially all of Contractor's assets, or in the event of a transfer of all or substantially all of Contractor's business and assets, whether by merger, sale of assets, sale of stock or otherwise, Contractor will exercise best commercial efforts to transition technical support requirements



under this Contract to an entity capable of providing comparable support to that currently offered by Contractor. Contractor will use best commercial efforts to provide any such entity with all information and Software documentation necessary to fulfill such support obligations.

2.314 WEBSITE INCORPORATION

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

2.4 Contract Review and Evaluation

2.401 CONTRACT COMPLIANCE INSPECTOR

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

Diana Quintero
 Department Of Information Technology
 (517) 241-7369
quinterod@michigan.gov

2.402 PERFORMANCE REVIEWS

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

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

2.403 AUDIT OF CONTRACT COMPLIANCE/ RECORDS AND INSPECTIONS

(a) Inspection of Work Performed. The State’s authorized representatives shall at all reasonable times and with ten (10) days prior written request, have the right to enter Contractor’s premises, or any other places, where the Services are being performed, and shall have access, upon reasonable request, to interim drafts of Deliverables or work-in-progress. Upon ten (10) Days prior written notice and during business hours, the State’s representatives shall be allowed to inspect, monitor, or otherwise evaluate the work being performed and to the extent that such access will not interfere or jeopardize the safety or operation of the systems or facilities. Contractor must provide all reasonable facilities and assistance for the State’s representatives, so long as no security, labor relations policies and propriety information policies are violated.



- (b) Examination of Records. No more than once per year, Contractor agrees that the State, including its duly authorized representatives, until the expiration of seven (7) years following the creation of the material (collectively, the "Audit Period"), shall, upon twenty (20) days prior written notice, have access to and the right to examine and copy any of Contractor's books, records, documents and papers pertinent to establishing Contractor's compliance with the terms and conditions of the Contract and with applicable laws and rules, including the State's procurement rules, regulations and procedures, and actual performance of the Contract for the purpose of conducting an audit, examination, excerpt and/or transcription but the State shall not have access to any information deemed confidential to Contractor to the extent such access would require such confidential information to become publicly available. This provision also applies to the books, records, accounts, documents and papers, in print or electronic form, of any parent, affiliated or subsidiary organization of Contractor, or any Subcontractor of Contractor performing services in connection with the Contract.

- (c) Retention of Records. Contractor shall maintain at least until the end of the Audit Period all pertinent financial and accounting records (including time sheets and payroll records, and information pertaining to the Contract and to the Services, equipment, and commodities provided under the Contract) pertaining to the Contract in accordance with generally accepted accounting principles and other procedures specified in this Section. Financial and accounting records shall be made available, upon request, to the State at any time during the Audit Period. If an audit, litigation, or other action involving Contractor's records is initiated before the end of the Audit Period, the records must be retained until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.

- (d) Audit Resolution. If necessary, the Contractor and the State shall meet to review each audit report promptly after issuance. The Contractor will respond to each audit report in writing within thirty (30) days from receipt of such report, unless a shorter response time is specified in such report. The Contractor and the State shall develop and agree upon an action plan to promptly address and resolve any deficiencies, concerns, and/or recommendations in such audit report.
 - 1. Errors. If the audit demonstrates any errors in the statements provided to the State, then the amount in error shall be reflected as a credit or debit on the next invoice and in subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried for more than four (4) quarterly statements. If a balance remains after four (4) quarterly statements, then the remaining amount will be due as a payment or refund within forty-five (45) days of the last quarterly statement that the balance appeared on or termination of the contract, whichever is earlier.

 - 2. In addition to other available remedies, the difference between the payment received and the correct payment amount is greater than ten (10%), then the Contractor shall pay all of the reasonable costs of the audit.

2.5 Quality and Warranties

2.501 PROHIBITED PRODUCTS

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

**2.502 RESERVED****2.503 RESERVED****2.504 GENERAL WARRANTIES (Software and Deliverables)**

Warranties and Disclaimers for the Software and Deliverables shall be pursuant to Section 8 of the LA.

2.505 CONTRACTOR WARRANTIES

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

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



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

2.506 STAFF

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

The Contractor shall not remove or reassign, without the State's prior written approval any of the Key Personnel until such time as the Key Personnel have completed all of their planned and assigned responsibilities in connection with performance of the Contractor's obligations under this Contract. The Contractor agrees that the continuity of Key Personnel is critical and agrees to the continuity of Key Personnel. Removal of Key Personnel without the written consent of the State may be considered by the State to be a material breach of this Contract. The prohibition against removal or reassignment shall not apply where Key Personnel must be replaced for reasons beyond the reasonable control of the Contractor including but not limited to illness, disability, resignation or termination of the Key Personnel's employment.

2.507 SOFTWARE WARRANTIES

Software warranties and remedies are pursuant to section 10 of the LA, and the following warranties are in addition to those in the LA:

(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

With the exception of necessary licensing keys which limit the Software to licensed parameters, the Contractor represents and warrants that no copy of licensed Software



provided to the State contains or will contain in 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.

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) RESERVED

2.508 RESERVED

2.509 PHYSICAL MEDIA WARRANTY

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

2.6 Breach of Contract

2.601 BREACH DEFINED

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

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

2.602 NOTICE AND THE RIGHT TO CURE

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



2.603 EXCUSABLE FAILURE

1. Neither party shall be liable for any default or delay in the performance of its obligations under the Contract if and to the extent such default or delay is caused, directly or indirectly, by: fire, flood, earthquake, elements of nature or acts of God; riots, civil disorders, rebellions or revolutions in any country; the failure of the other party to perform its material responsibilities under the Contract (either itself or through another contractor); injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of such party; provided the non-performing party and its subcontractors are without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, 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 best efforts to recommence performance or observance whenever and to whatever extent possible without delay provided such party promptly notifies the other party in writing of the inception of the excusable failure occurrence, and also of its abatement or cessation.

2. If any of the above enumerated circumstances substantially prevent, hinder, or delay performance of the services necessary for the performance of the State's functions for more than 14 consecutive days, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State in its reasonable discretion, then at the State's option: (a) the State may procure the affected services from an alternate source, and the State shall not be liable for payments for the unperformed services under the Contract for so long as the delay in performance shall continue; (b) the State may cancel any portions of the Contract so affected and the charges payable hereunder shall be equitably adjusted to reflect those services canceled; or (c) the Contract will be canceled without liability of the State to the Contractor as of the date specified by the State in a written notice of cancellation to the Contractor. The Contractor will not have the right to any additional payments from the State as a result of any excusable failure occurrence or to payments for services not rendered as a result of the excusable failure condition. Defaults or delays in performance by the Contractor which are caused by acts or omissions of its subcontractors will not relieve the Contractor of its obligations under the Contract except to the extent that a subcontractor is itself subject to any excusable failure condition described above and the Contractor cannot reasonably circumvent the effect of the subcontractor's default or delay in performance through the use of alternate sources, workaround plans or other means.

2.7 Remedies

2.701 CANCELLATION

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

1. Material Breach by the Contractor. In the event that the Contractor breaches any of its material duties or obligations under the Contract, which are either not capable of or subject to being cured, or are not cured within the time period specified in the written notice of breach provided by the State, or pose a serious and imminent threat to the health and safety of any person, or the imminent loss, damage or destruction of any real or tangible personal property, the State may, having provided written notice of cancellation to the Contractor, cancel this Contract in whole or in part, for cause, as of the date specified in the notice of cancellation.



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

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

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

2. Cancellation For Convenience By the State. The State may cancel this Contract for its convenience, in whole or part, if the State determines that such a cancellation is in the State's best interest. Reasons for such cancellation shall be left to the sole discretion of the State and may include, but not limited to (a) the State no longer needs the services or products specified in the Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Contract services no longer practical or feasible, and (c) unacceptable prices for additional services requested by the State. The State may cancel the Contract for its convenience, in whole or in part, by giving the Contractor written notice 30 days prior to the date of cancellation. If the State chooses to cancel this Contract in part, the charges payable under this Contract shall be equitably adjusted to reflect those services that are cancelled; provided, however, annual Maintenance services would be provided for the balance of the term for which they were paid without right of refund.

3. Non-Appropriation. In the event that funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available, the Contractor acknowledges that, if this Contract extends for several fiscal years, continuation of this Contract is subject to appropriation or availability of funds for this project. If funds are not appropriated or otherwise made available, the State shall have the right to cancel this Contract at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of cancellation to the Contractor. The State shall give the Contractor written notice of such non-appropriation or unavailability within 30 days after it receives notice of such non-appropriation or unavailability.

4. Criminal Conviction. In the event the Contractor, an officer of the Contractor, or an owner of a 25% or greater share of the Contractor, is convicted of a criminal offense incident to the application for or performance of a State, public or private Contract or subcontract; or convicted of a criminal offense including but not limited to any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for State of Michigan employees; convicted under State or federal antitrust statutes; or convicted of any other criminal offense which in the sole discretion of the State, reflects upon the Contractor's business integrity.



- 5. Approvals Rescinded. The State may terminate this Contract without further liability or penalty in the event any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services pursuant to Constitution 1963, Article 11, section 5, and Civil Service Rule 7. Termination may be in whole or in part and may be immediate as of the date of the written notice to Contractor or may be effective as of the date stated in such written notice.

2.702 RIGHTS UPON CANCELLATION

A. RESERVED

B. RESERVED

C. Reservation of Rights

Any termination of the Contract 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.

D. RESERVED

E. RESERVED

2.703 RESERVED

2.704 RESERVED

2.705 SUSPENSION OF WORK

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

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

A claim under this clause shall not be allowed:

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



2.8 Changes, Modifications, and Amendments

2.801 APPROVALS

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

2.802 TIME EXTENTIONS

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

2.803 MODIFICATION

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

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

2.804 AUDIT AND RECORDS UPON MODIFICATION

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

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

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

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

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



2.805 CHANGES

- (a) The Contract Administrator may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes:
 - (1) In the specifications (including drawings and designs);
 - (2) In the method or manner of performance of the work;
 - (3) In the Government-furnished facilities, equipment, materials, services, or site; or
 - (4) Directing acceleration in the performance of the work.

- (b) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contract Administrator that causes a change shall be treated as a change order under this clause; Provided, that the Contractor gives the Contract Administrator written notice stating:
 - (1) The date, circumstances, and source of the order; and
 - (2) That the Contractor regards the order as a change order.

- (c) Except as provided in this clause, no order, statement, or conduct of the Contract Administrator shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.