

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

May 17, 2010

CHANGE NOTICE NO. 3
TO
CONTRACT NO. 071B6200313
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR CTB McGraw-Hill 20 Ryan Ranch Road Monterey, CA 93940-5703 <div style="text-align: right;">jerry_mccanna@ctb.com</div>	TELEPHONE (317) 581-9404 Jerry McCanna
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-3768 Lance Kingsbury
Contract Compliance Inspector: Julie DeRose (517) 335-1388 Educational Assessments - Michigan Department of Corrections	
CONTRACT PERIOD: From: June 7, 2006 To: June 14, 2011	
TERMS <div style="text-align: center;">N/A</div>	SHIPMENT <div style="text-align: center;">N/A</div>
F.O.B. <div style="text-align: center;">N/A</div>	SHIPPED FROM <div style="text-align: center;">N/A</div>
MINIMUM DELIVERY REQUIREMENTS <div style="text-align: center;">N/A</div>	

NATURE OF CHANGE (S):

Effective June 15, 2010, this State hereby exercises a one-year option, extending the expiration date to June 14, 2011. Additionally, revised pricing is hereby incorporated into this Contract (see Article 1 Attachment A – Pricing for revised pricing).

All other terms, conditions and specifications remain unchanged.

AUTHORITY/REASON:

Per Agency request, Contractor approval, and DTMB/Purchasing Operations' approval.

CURRENT AUTHORIZED SPEND LIMIT REMAINS: \$556,267.00

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

July 7, 2009

CHANGE NOTICE NO. 2
TO
CONTRACT NO. 071B6200313
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR CTB McGraw-Hill 20 Ryan Ranch Road Monterey, CA 93940-5703 jerry_mccanna@ctb.com	TELEPHONE (317) 581-9404 Jerry McCanna
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-3768 Lance Kingsbury
Contract Compliance Inspector: Julie DeRose (517) 335-1388 Educational Assessments - Michigan Department of Corrections	
CONTRACT PERIOD: From: June 7, 2006 To: June 14, 2010	
TERMS N/A	SHIPMENT N/A
F.O.B. N/A	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A	

NATURE OF CHANGE(S):

Effective June 15, 2009, this State hereby exercises a one-year option, extending the expiration date to June 14, 2010.

Additionally, the vendor contact is changed to: Jerry McCanna (317) 581-9404.

NOTE: The DMB Buyer for this Contract is changed to Lance Kingsbury (517) 241-3768.

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

AUTHORITY/REASON:

Per agency request (PRF dated 6/11/09), vendor agreement (email dated 6/18/09), and DMB/Purchasing Operations' approval.

CURRENT AUTHORIZED SPEND LIMIT REMAINS: \$556,267.00

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

July 3, 2008

CHANGE NOTICE NO. 1
TO
CONTRACT NO. 071B6200313
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR CTB McGraw-Hill 20 Ryan Ranch Road Monterey, CA 93940-5703 Charlie_astorino@ctb.com	TELEPHONE (203) 457-2284 Charlie Astorino
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 335-4804 Douglas Collier
Contract Compliance Inspector: Julie DeRose (517) 335-1388 Educational Assessments for Department of Corrections	
CONTRACT PERIOD: From: June 7, 2006 To: June 14, 2009	
TERMS N/A	SHIPMENT N/A
F.O.B. N/A	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A	

NATURE OF CHANGE(S):

Effective immediately, the DMB Buyer for this Contract is changed to Jim Wilson 517-241-1916. All other terms, conditions, specifications, and pricing remain unchanged.

AUTHORITY/REASON:

Per DMB/Purchasing Operations.

CURRENT AUTHORIZED SPEND LIMIT REMAINS: \$556,267.00

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

June 9, 2006

**NOTICE
 TO
 CONTRACT NO. 071B6200313
 between
 THE STATE OF MICHIGAN
 and**

NAME & ADDRESS OF VENDOR CTB McGraw-Hill 20 Ryan Ranch Road Monterey, CA 93940-5703 Charlie_astorino@ctb.com	TELEPHONE (203) 457-2284 Charlie Astorino
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 335-4804 Douglas Collier
Contract Compliance Inspector: Julie DeRose (517) 335-1388 Educational Assessments for Department of Corrections	
CONTRACT PERIOD: From: June 7, 2006 To: June 14, 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>	

The terms and conditions of this Contract are those of ITB #071I6200162, this Contract Agreement and the vendor's quote dated 03/29/2006. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.

Estimated Contract Value: **\$556,267.00**

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

**CONTRACT NO. 071B6200313
 between
 THE STATE OF MICHIGAN
 and**

NAME & ADDRESS OF VENDOR CTB McGraw-Hill 20 Ryan Ranch Road Monterey, CA 93940-5703 <p style="text-align: right;">Charlie_astorino@ctb.com</p>	TELEPHONE (203) 457-2284 Charlie Astorino VENDOR NUMBER/MAIL CODE BUYER/CA (517) 335-4804 Douglas Collier
Contract Compliance Inspector: Julie DeRose (517) 335-1388 <p style="text-align: center;">Educational Assessments for Department of Corrections</p>	
CONTRACT PERIOD: From: June 7, 2006 To: June 14, 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: <p>The terms and conditions of this Contract are those of ITB #071I6200162, this Contract Agreement and the vendor's quote dated 03/29/2006. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.</p> <p>Estimated Contract Value: \$556,267.00</p>	

<p>FOR THE VENDOR:</p> <p style="text-align: center;">CTB McGraw-Hill</p> <hr/> <p style="text-align: center;">Firm Name</p> <hr/> <p style="text-align: center;">Authorized Agent Signature</p> <hr/> <p style="text-align: center;">Authorized Agent (Print or Type)</p> <hr/> <p style="text-align: center;">Date</p>	<p>FOR THE STATE:</p> <p style="text-align: center;">Signature</p> <hr/> <p style="text-align: center;">Melissa Castro, CPPB, Buyer Manager</p> <hr/> <p style="text-align: center;">Name</p> <hr/> <p style="text-align: center;">Services Division, Purchasing Operations</p> <hr/> <p style="text-align: center;">Title</p> <hr/> <p style="text-align: center;">Date</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------



**STATE OF MICHIGAN
Department of Management and Budget
Purchasing Operations**

Contract No. **071B6200313**
Educational Assessments for the Department of Corrections

**Buyer Name: Douglas Collier
Telephone Number: 517 / 335-4804
E-Mail Address: Collierd1@michigan.gov**



Table of Contents

Article 1 – STATEMENT OF WORK (SOW) 7

 1.0 PROJECT IDENTIFICATION 7

 1.001 PROJECT REQUEST 7

 1.002 BACKGROUND 7

 1.1 SCOPE OF WORK AND DELIVERABLES 7

 1.101 IN SCOPE 7

 1.102 OUT OF SCOPE 7

 1.103 ENVIRONMENT 7

 1.104 WORK AND DELIVERABLE 8

 1.2 ROLES AND RESPONSIBILITIES 8

 1.201 CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES 8

 1.202 STATE STAFF, ROLES, AND RESPONSIBILITIES 10

 1.203 OTHER ROLES AND RESPONSIBILITIES - RESERVED 11

 1.3 PROJECT PLAN 11

 1.301 PROJECT PLAN MANAGEMENT - RESERVED 11

 1.302 REPORTS - RESERVED 11

 1.4 PROJECT MANAGEMENT 11

 1.401 ISSUE MANAGEMENT - RESERVED 11

 1.402 RISK MANAGEMENT - RESERVED 11

 1.403 CHANGE MANAGEMENT 11

 1.5 ACCEPTANCE 11

 1.501 CRITERIA 11

 1.502 FINAL ACCEPTANCE 11

 1.6 COMPENSATION AND PAYMENT 12

 1.601 COMPENSATION AND PAYMENT 12

 1.7 ADDITIONAL TERMS AND CONDITIONS SPECIFIC TO THIS SOW 12

 1.701 ADDITIONAL TERMS AND CONDITIONS SPECIFIC TO THIS SOW - RESERVED 12

Article 1B – EVALUATION INFORMATION 13

 1B.100 VENDOR INFORMATION 13

 1B.101 VENDOR NAME AND ADDRESS 13

 1B.102 LOCATION ADDRESS 13

 1B.103 ORGANIZATION AND YEAR 13

 1B.104 CONTACT 13

 1B.200 QUALIFICATIONS 13

 1B.201 PRIOR EXPERIENCE 13

 1B.202 STAFFING (SEE SECTION 1.201) 14

 1B.203 PAST PERFORMANCE 14

 1B.204 CONTRACT PERFORMANCE 14

 1B.300 DISCLOSURES 14

 1B.301 DISCLOSURE OF LITIGATION (RESERVED) 14

 1B.302 DISCLOSURE OF RFP ASSISTANCE (RESERVED) 14

 1B.303 MIDEAL - EXTENDED PURCHASING (See Article 2, Section 2.320) (Reserved) 14

Article 1, ATTACHMENT A 15

Article 2 – GENERAL TERMS AND CONDITIONS 25

 2.010 CONTRACT STRUCTURE AND ADMINISTRATION 25

 2.011 DEFINITIONS 25

 2.012 ATTACHMENTS AND EXHIBITS 25

 2.013 STATEMENTS OF WORK 25

 2.014 ISSUING OFFICE 26

 2.015 CONTRACT COMPLIANCE INSPECTOR 26

 2.020 CONTRACT OBJECTIVES/SCOPE/BACKGROUND 27

 2.021 BACKGROUND 27

 2.022 PURPOSE 27

 2.023 OBJECTIVES AND SCOPE 27

 2.024 INTERPRETATION 27

 2.025 FORM, FUNCTION AND UTILITY 27



2.030 LEGAL EFFECT AND TERM 27

 2.031 LEGAL EFFECT 27

 2.032 CONTRACT TERM 28

2.040 CONTRACTOR PERSONNEL 29

 2.041 CONTRACTOR PERSONNEL 29

 2.042 CONTRACTOR IDENTIFICATION 30

 2.043 COOPERATION WITH THIRD PARTIES 31

 2.044 SUBCONTRACTING BY CONTRACTOR 31

 2.045 CONTRACTOR RESPONSIBILITY FOR PERSONNEL 31

2.050 STATE STANDARDS 32

 2.051 EXISTING TECHNOLOGY STANDARDS - 32

 2.052 PM METHODOLOGY STANDARDS - RESERVED 32

 2.053 ADHERENCE TO PORTAL TECHNOLOGY TOOLS - 32

 2.054 ACCEPTABLE USE POLICY - 32

2.060 DELIVERABLES 32

 2.061 ORDERING 32

 2.062 SOFTWARE - 32

 2.063 HARDWARE - RESERVED 32

 2.064 EQUIPMENT TO BE NEW AND PROHIBITED PRODUCTS - RESERVED 32

2.070 PERFORMANCE 33

 2.071 PERFORMANCE, IN GENERAL 33

 2.072 TIME OF PERFORMANCE 33

 2.073 LIQUIDATED DAMAGES - RESERVED 33

 2.074 BANKRUPTCY 33

 2.075 TIME IS OF THE ESSENCE 33

2.080 DELIVERY AND ACCEPTANCE OF DELIVERABLES 33

 2.081 DELIVERY RESPONSIBILITIES 33

 2.082 DELIVERY OF DELIVERABLES 34

 2.083 TESTING 34

 2.084 APPROVAL OF DELIVERABLES, IN GENERAL 34

 2.085 PROCESS FOR APPROVAL OF WRITTEN DELIVERABLES 35

 2.086 PROCESS FOR APPROVAL OF SERVICES 35

 2.087 PROCESS FOR APPROVAL OF PHYSICAL DELIVERABLES 36

 2.088 FINAL ACCEPTANCE 36

2.090 FINANCIAL 36

 2.091 PRICING 36

 2.092 INVOICING AND PAYMENT PROCEDURES AND TERMS 36

 2.093 STATE FUNDING OBLIGATION 37

 2.094 HOLDBACK 38

 2.095 ELECTRONIC PAYMENT AVAILABILITY 38

2.100 CONTRACT MANAGEMENT 38

 2.101 CONTRACT MANAGEMENT RESPONSIBILITY 38

 2.102 PROBLEM AND CONTRACT MANAGEMENT PROCEDURES 38

 2.104 SYSTEM CHANGES 39

 2.105 RESERVED 39

 2.106 CHANGE REQUESTS 39

2.110 RECORDS AND INSPECTIONS 40

 2.111A RECORDS AND INSPECTIONS 40

 2.111B RECORDS AND INSPECTIONS - RESERVED 41

 2.112 ERRORS 41

2.120 STATE RESPONSIBILITIES 41

 2.121 STATE PERFORMANCE OBLIGATIONS 41

2.130 SECURITY 42

 2.131 BACKGROUND CHECKS 42

2.140 RESERVED 43



2.150 CONFIDENTIALITY..... 43

2.151 FREEDOM OF INFORMATION..... 43

2.152 CONFIDENTIALITY..... 43

2.153 PROTECTION OF CONFIDENTIAL INFORMATION..... 43

2.154 EXCLUSIONS..... 44

2.155 NO IMPLIED RIGHTS..... 44

2.156 REMEDIES..... 44

2.157 SECURITY BREACH NOTIFICATION..... 44

2.158 SURVIVAL..... 44

2.159 DESTRUCTION OF CONFIDENTIAL INFORMATION..... 44

2.160 PROPRIETARY RIGHTS..... 45

2.163 RIGHTS IN DATA..... 45

2.164 OWNERSHIP OF MATERIALS..... 46

2.165 STANDARD SOFTWARE..... 46

2.166 PRE-EXISTING MATERIALS FOR CUSTOM SOFTWARE DELIVERABLES..... 46

2.167 GENERAL SKILLS..... 46

2.170 WARRANTIES AND REPRESENTATIONS..... 46

2.171 WARRANTIES AND REPRESENTATIONS..... 46

2.175 STANDARD WARRANTIES..... 50

2.176 CONSEQUENCES FOR BREACH..... 50

2.180 INSURANCE..... 50

2.181 LIABILITY INSURANCE..... 50

2.190 INDEMNIFICATION..... 52

2.191 INDEMNIFICATION..... 52

2.192 CONTINUATION OF INDEMNIFICATION OBLIGATIONS..... 53

2.193 INDEMNIFICATION PROCEDURES..... 53

2.200 LIMITS OF LIABILITY AND EXCUSABLE FAILURE..... 54

2.201 LIMITS OF LIABILITY..... 54

2.202 EXCUSABLE FAILURE..... 54

2.203 DISASTER RECOVERY..... 55

2.210 TERMINATION/CANCELLATION BY THE STATE..... 55

2.211 TERMINATION FOR CAUSE..... 55

2.212 TERMINATION FOR CONVENIENCE..... 56

2.213 NON-APPROPRIATION..... 57

2.214 CRIMINAL CONVICTION..... 57

2.216 RIGHTS AND OBLIGATIONS UPON TERMINATION..... 57

2.217 RESERVATION OF RIGHTS..... 58

2.218 CONTRACTOR TRANSITION RESPONSIBILITIES..... 58

2.219 STATE TRANSITION RESPONSIBILITIES..... 59

2.220 TERMINATION BY CONTRACTOR..... 59

2.221 TERMINATION BY CONTRACTOR..... 59

2.230 STOP WORK..... 59

2.231 STOP WORK ORDERS..... 59

2.232 CANCELLATION OR EXPIRATION OF STOP WORK ORDER..... 59

2.233 ALLOWANCE OF CONTRACTOR COSTS..... 59

2.240 RESERVED..... 59

2.250 DISPUTE RESOLUTION..... 59

2.251 IN GENERAL..... 60

2.252 INFORMAL DISPUTE RESOLUTION..... 61

2.253 INJUNCTIVE RELIEF..... 61

2.254 CONTINUED PERFORMANCE..... 61

2.260 FEDERAL AND STATE CONTRACT REQUIREMENTS..... 61

2.261 NONDISCRIMINATION..... 61

2.262 UNFAIR LABOR PRACTICES..... 62

2.263 WORKPLACE SAFETY AND DISCRIMINATORY HARASSMENT..... 62



2.270 LITIGATION..... 62

2.271 DISCLOSURE OF LITIGATION..... 62

2.272 GOVERNING LAW 63

2.273 COMPLIANCE WITH LAWS..... 63

2.274 JURISDICTION 63

2.280 ENVIRONMENTAL PROVISION 63

2.281 ENVIRONMENTAL PROVISION 63

2.290 GENERAL 64

2.291 AMENDMENTS..... 64

2.292 ASSIGNMENT 64

2.293 ENTIRE CONTRACT; ORDER OF PRECEDENCE..... 64

2.294 HEADINGS 64

2.295 RELATIONSHIP OF THE PARTIES (INDEPENDENT CONTRACTOR) 65

2.296 NOTICES 65

2.297 MEDIA RELEASES AND CONTRACT DISTRIBUTION 65

2.298 REFORMATION AND SEVERABILITY 65

2.299 CONSENTS AND APPROVALS..... 66

2.300 NO WAIVER OF DEFAULT 66

2.301 SURVIVAL 66

2.302 COVENANT OF GOOD FAITH..... 66

2.303 PERMITS 66

2.304 WEBSITE INCORPORATION 66

2.305 TAXES..... 66

2.306 PREVAILING WAGE..... 66

2.307 CALL CENTER DISCLOSURE (RESERVED) 67

2.308 FUTURE BIDDING PRECLUSION 67

2.310 RESERVED..... 67

2.320 EXTENDED PURCHASING..... 67

2.321 MIDEAL..... 67

2.330 FEDERAL GRANT REQUIREMENTS 68

2.331 FEDERAL GRANT REQUIREMENTS..... 68

Attachments

- CTB Software License Agreement
- CTB Customer Support and Software Enhancement Agreement



Article 1 – Statement of Work (SOW)

1.0 Project Identification

1.001 PROJECT REQUEST

The purpose of this Contract is to provide services for Adult Basic Education (TABE) 9/10 book, supplies, 9/10 software, software maintenance/support and materials necessary to complete the prisoner education assessment project. The Michigan Department of Corrections (MDOC) will conduct prisoner education assessments as required by the State of Michigan for adult education districts and state agencies providing educational programming for adults.

1.002 BACKGROUND

The MDOC is responsible for conducting and maintaining the educational functioning level for prisoners enrolled in academic and/or vocational programming. The Michigan Department of Labor and Economic Growth (MDLEG) Adult Education and Michigan Department of Education (MDOE) are the state agencies responsible for maintaining the scores for all districts and state agencies. In order to standardize the statewide assessment process, MDLEG is requiring districts and state agencies to utilize specific testing instruments. MDOC is currently using the TABE 7/8 and will need to upgrade to the 9/10 assessment level in order to meet state guidelines.

1.1 Scope of Work and Deliverables

1.101 IN SCOPE

The purchase of TABE 9/10 books, supplies, 9/10 software, software maintenance/support and materials.

Bidder Response to Task:

To meet the requirements of the ITB, CTB proposes to provide TABE 9&10 test books, ancillary materials, TestMate TABE for Windows software, software maintenance and support. TABE's various components, levels, and forms make it possible to focus assessment activities efficiently. The TABE Survey version is used when testing time is limited. The Survey yields scores for Total Reading, Total Mathematics, Total Language, and Total Battery. The Survey edition includes a Practice Exercise and Locator Test to facilitate student understanding of test format and procedures.

1.102 OUT OF SCOPE

The contractor will be able to provide all necessary materials / supplies only needed to complete this project. Vendor will not provide any scoring or reports.

Bidder Response to Task:

CTB will provide all necessary materials and supplies needed to complete this project and as specified in this proposal. These materials include TABE 9/10 testing materials and scanning/scoring software. We will not provide any scoring or reports, except for those provided on-site through the software requested in the ITB.

1.103 ENVIRONMENT

See the IT requirements in Section II

Bidder Response to Task:

CTB recommends the following systems, scanners, printers and operating systems for use with the proposed TABE PC for Windows.

System Recommendations

- 256 MB or RAM
- 10 MG hard drive
- Pentium III or higher
- VGA monitor



Scanners

TABE supports all new scanners with 48-column read-heads, including NCS OpScan series and Scantron Scanmark series (it does not support the ScanTron 8000 scanner family).

Printer

Any printer supported by Windows.

Operating Systems

Windows 98 SE
 Windows NT
 Workstation 2000
 Windows XP
 Network (TABE-PC only)
 Novell 5.0 or later version
 Microsoft Windows NT Server 4.0 (or later version)

1.104 WORK AND DELIVERABLE

The contractor will be able to provide all necessary materials need to complete this project.

Bidder Response to Task:

CTB will provide all necessary materials needed to complete this project as requested in Article 1, Attachment A.

These include:

- **Guide to Administering TABE 9&10**—to assist in preparation and completion of administration of the assessments.
- **Norms Book**—to assist in evaluation of the conversion of number-correct scores to scale scores, grade equivalents, normal curve equivalents, percentile ranks, and stanines when the TABE 9&10 is hand scored.
- **Locator Answer Sheets**—stencil and scannable, for either handscoring or use with TestMate TABE for Windows software. Locator Answer Sheets are consumable with one answer sheet used per test taker per assessment.
- **Survey Answer Sheets**—stencil and scannable, for either handscoring or use with TestMate TABE for Windows software. Survey answer sheets are consumable with one answer sheet used per test taker per assessment.
- **TABE 9&10 Scoring Stencils for Levels E, M, D and A**—for use in handscoring answer documents. Scoring stencils are reusable.
- **TABE 9&10 Test Books for Levels E, M, D and A**—for use in administration of the assessment. Test Books are reusable, however, one book must be provided for each test taker at the time that the test is administered.
- **TABE 9&10 Practice Exercise/Locator Test**—to facilitate student understanding of test format and procedures.
- **TABE 9&10 Practice Exercise/Locator Test CompuScan 48 Column Answer Sheets**—for use in handscoring or scanning of Practice Exercise/Locator Tests.

1.2 Roles and Responsibilities

1.201 CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES

Bidder Response to Task:

Mr. Charlie Astorino, District Manager, and Dr. Michael LaBay, CTB Evaluation Consultant, will work directly with the MDOC. Providing support to Mr. Astorino and Dr. LaBay will be Dr. Dan Gall, National Consultant for Adult Assessment Products; Linda Bond, National Assessment Manager; and Andrea Kingman, Adult Education Product Manager. Résumés for each are provided in 1B.202 as required by this ITB. Bios for each are provided below. Mr. Astorino will be the point of contact for this contract.

**Charlie Astorino**

CTB/McGraw-Hill employee since 1989

District Manager

Job Description: As a District Manager, Mr. Astorino is responsible for managing the Evaluation Consultants and assessment program staff for the states of Michigan, Pennsylvania, New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire and Maine to provide assessment solutions.

Education: B.S. Business Administration and Computer Science.

Successes and Innovations: Mr. Astorino secured and implemented Connecticut adoption of LAS Links, secured and implemented Connecticut Vocational Entrance Examination system with online testing.

Relevance of these to present work: Mr. Astorino works effectively with large districts with implementation of assessment and technology.

Linda A. Bond, Ph.D.

Manager, National Assessment Consultants, Eastern Region

CTB/McGraw-Hill employee since 1997

Job Description: Dr. Bond manages the National Assessment Consultant Team in the Eastern Region of CTB/McGraw-Hill. She and her team work with state Departments of Education and large city Assessment Program Divisions to provide support in the development of assessment solutions that meet the state or school district's need for student achievement information for data-driven decision-making. The team includes individuals with experience as a state testing director, a city superintendent, a private consultant to low performing school districts, an assistant superintendent in a rural school district and an educational psychologist.

Education: Ph.D. in Counseling and Educational Inquiry Methodology 1982; M.S. in Counseling and Guidance 1978, Indiana University.

Successes and Innovations: Dr. Bond received the 2000 CTB John Armstrong Award for outstanding service to customers. She also co-directed the CCSSO Annual Survey of State Testing Programs and has been a member of the CCSSO Large Scale Assessment Conference planning committee since 1994. She has worked directly with over fifteen state assessment programs and a dozen large city programs.

Relevance of these to present work: In former positions, Dr. Bond's reputation as a thoughtful and practical administrator of and consultant to large scale assessment programs was well known. Her understanding of the technical and policy implications of high stakes, large scale assessment programs has enabled her to offer sound advice and to understand the needs of her customers.

Contracts assigned: Department of Defense Schools Assessment Program, Florida FCAT, Indiana ISTEP+, Maryland State Assessment Program, Massachusetts MCAS Program, New York State Assessment Program, New York State Regents Program; supervisor to National Assessment Consultants for all other state and large district assessment programs in the Eastern Region.

Past work: Dr. Bond has served as a state testing director, a policy analyst for a state superintendent, and as the director of assessment for the North Central Regional Educational Laboratory. She has served as a member of several large city and state Technical Advisory Committees and has written about and spoken extensively on issues related to high stakes assessment.

Dan Gall

National Consultant for Adult Assessment Products

CTB/McGraw-Hill employee since 1986

Job Description: Mr. Gall has works closely with the adult education divisions throughout the country, conducting workshops and training sessions in all aspects of adult education. He closely monitors Federal Government legislation regarding the implementation of adult education programs. Dan is responsible for and oversees all needs of the Federal Corrections program and U.S. Job Corps. He works closely with Correctional programs in Florida, Texas, Oklahoma, Alabama and Georgia. Dan trains and works closely with state consultants and department of education personnel, provides assessment training for customers, and helps in the design and implementation of assessment programs; he also provides software solutions for public and private schools as well as business and industry.

Education: Florida State University, Tallahassee, Florida: 96 hours graduate work, leading to Doctoral Candidacy in Administration–Supervision; University of West Florida, Pensacola, Florida, Panama City Extension; 20 hours graduate work in Learning Disabilities, 20 hours graduate work in School Psychology leading to certification; 30 hours graduate work in Counseling Psychology; M.S degree, Florida State University, Tallahassee, Florida; B.A degree, St. Leo College, St. Leo, Florida; Fine Arts (Education Minor).



Successes and Innovations: Since joining CTB in 1986, Mr. Gall has served as a Florida Evaluation Consultant, Senior Consultant, a District Manger and a National Assessment Consultant. He has worked closely with the adult education divisions throughout the country, conducting workshops and training sessions in all aspects of adult education.

Contracts assigned: Mr. Gall works closely with the Federal Government and with Correctional programs in Florida, Texas, Oklahoma, Alabama and Georgia.

Past work: School Psychologist, Learning Disabilities Teacher, Bay County School System, Tallahassee, FL: 1973 to 1974; Instructor/Group Therapist, Florida School for Boys; Adjunct Professor, University of West Florida.

Andrea S. Kingman

*Product Manager, Adult Education/Business and Industry
CTB/McGraw-Hill employee since 1986*

Job Description: Ms. Kingman is Product Manager for Adult Education and Business and Industry assessments and services. She has the opportunity to study market needs by talking with customers and with the field staff and to recommend the development of new products for adult learners. Ms. Kingman works with CTB's internal teams as these products are conceptualized, designed, developed, and brought to market. Once products are released, she works closely with Sales, Marketing, and Program Management to ensure that new products provide solutions to customers. Ms. Kingman enjoys interacting with customers to learn about how CTB products are implemented in adult education programs in a variety of settings including Correctional education programs. Ms. Kingman is a member of the Correctional Education Association.

Education: Ms. Kingman holds a Secondary Teaching Credential in English and French and a B.A. Degree in English from the University of California, Berkeley. She has held several marketing positions including Director of Marketing for a former McGraw-Hill division. She has had the opportunity to manage several large-scale certification and licensure contracts such as the National Council of State Boards of Nursing (NCLEX), the California Psychiatric Technician's Examination, and the California Architects examination.

Successes and Innovations: Ms. Kingman has successfully brought to market new online products over the past three years. She has helped CTB streamline internal processes in order to become as effective as possible in meeting market needs and is currently preparing to launch a new English Language Proficiency Assessment for adult English language learners. Ms. Kingman has worked with Program Managers in supporting many contracts across the company. Most recently she has supported the statewide implementation of TABE content by U. S. Job Corps.

Past work: Sr. Program Manager, Strategic Alliances, NCS Pearson; Director of Marketing, McGraw-Hill School Systems; Project Director, CTB/McGraw-Hill; Sr. Business Analyst, Fidelity Investments; Associate Product Manager, Infocom; English Teacher, Brooks School, N. Andover, MA; English/French Teacher, North Monterey County HS, Castroville, CA.

Michael LaBay

*Present Position Evaluation Consultant
CTB/McGraw-Hill employee since 1999*

Job Description: Dr. LaBay establishes and maintains working relationships based on the needs of Michigan customers related to CTB products and services. He is the primary consultant for public and private educational institutions in the state that use CTB student and adult testing materials. He assists districts in the design of school improvement projects and program evaluations and the maintenance of student assessment systems.

Education: Ph.D. in Educational Administration and Educational Research.

Successes and Innovations: Dr. LaBay is a standing member of the Diamond Sales Award club for outstanding sales accomplishment within territory.

Contracts assigned: Dr. LaBay is assigned all contracts within the state of Michigan.

Dr. LaBay's past employment includes school superintendent, curriculum director, testing director, and teacher in public and private schools.

It is our expectation that upon award of this contract, specifics regarding training will be negotiated and times established. CTB will train the Department of Corrections staff on the use of TABE materials and software upon request and we recommend use of a single site (Lansing Training Center) because of proximity for the Corrections' principals and the appropriateness of the facility.

1.202 STATE STAFF, ROLES, AND RESPONSIBILITIES

One Departmental Technician located in the Education Section in the Correctional Facilities Administration will be the contact point and will be the person who will be approving the invoices.

Department of Information Technology Procurement staff will be responsible for the purchase and approval of invoices for any software and software maintenance/support. These invoices to be sent to the "billing address" listed on the purchase order.



1.203 OTHER ROLES AND RESPONSIBILITIES - RESERVED

1.3 Project Plan

Bidder Response to Tasks:

It is our understanding that the order(s) for materials will be placed via Purchase Order. Upon receipt of a Purchase Order, CTB will ship the materials to the site(s) as indicated on the Purchase Order and the invoice to the billing address as indicated. Materials will be sent via shippers with which we have an established working relationship and who can provide tracking of all shipments.

1.301 PROJECT PLAN MANAGEMENT - RESERVED

1.302 REPORTS - RESERVED

1.4 Project Management

1.401 ISSUE MANAGEMENT - RESERVED

1.402 RISK MANAGEMENT - RESERVED

1.403 CHANGE MANAGEMENT

If a proposed contract change is approved by the Contract Compliance Inspector, the Contract Compliance Inspector will submit a request for change to the Department of Management and Budget, Purchasing Operations Buyer, who will make recommendations to the Director of Purchasing Operations regarding ultimate approval/disapproval of change request. If the DMB Purchasing Operations Director agrees with the proposed modification, and all required approvals are obtained (including State Administrative Board), the Purchasing Operations Buyer will issue an addendum to the Contract, via a Contract Change Notice. **Vendors who provide products or services prior to the issuance of a Contract Change Notice by the DMB Office of Purchasing Operations, risk non-payment for the out-of-scope/pricing products and/or services.**

Bidder Response to Tasks

The Contract states that the vendor is only to provide products after issuance of a Contract Change Notice by the Department of Management and Budget Office of Purchasing Operations. Should products or services be provided prior to this event, CTB understands that we would risk non-payment for the out-of-scope/pricing products and/or services.

1.5 Acceptance

1.501 CRITERIA

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

The contractor shall provide all necessary books, supplies, software, software maintenance/support. As listed in Appendix A required materials

1.502 FINAL ACCEPTANCE

Final acceptance will be accomplished once the contractor has shipped all requested books, supplies, software, software maintenance/support and materials.



1.6 Compensation and Payment

1.601 COMPENSATION AND PAYMENT

Please see attached pricing sheets for breakdown of IT items and requested quantity of required materials in attachment A.

1.7 Additional Terms and Conditions Specific to this SOW

1.701 ADDITIONAL TERMS AND CONDITIONS SPECIFIC TO THIS SOW - RESERVED



ARTICLE 1B – EVALUATION INFORMATION

REQUIRED VENDOR INFORMATION

1B.100 Vendor Information

1B.101 VENDOR NAME AND ADDRESS

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

Name:	<u>CTB/McGraw-Hill</u>
Address:	<u>20 Ryan Ranch Rd</u>
City, State, Zip:	<u>Monterey, CA</u>
Phone:	<u>(800) 538 - 9547</u>
Web Page:	<u>www.ctb.com</u>

1B.102 LOCATION ADDRESS

Address:	<u>20 Ryan Ranch Rd</u>
City, State, Zip:	<u>Monterey, CA 93940</u>

1B.103 ORGANIZATION AND YEAR

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

Status:	<u>Limited Liability Company, LLC, 1926</u>
---------	---------------------------------------------

1B.104 CONTACT

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

Name:	<u>Charlie Astorino</u>
Address:	<u>445 Northwood Drive</u>
City, State, Zip:	<u>Guilford, Ct 06437</u>
Phone:	<u>(203) 457 - 2284</u>
Fax:	<u>(203) 457 - 2285</u>
E-Mail:	<u>Charlie_astorino@ctb.com</u>

Note: Person named above will be sole contact for your company to receive the Contract.

Include the name and telephone number of person(s) in your company authorized to expedite any proposed contract with the State.

1B.200 Qualifications

1B.201 PRIOR EXPERIENCE

Indicate the prior experience of your firm, which you consider relevant to your ability to successfully manage a contract for the commodity or service defined by this Invitation to Bid. Include sufficient detail to demonstrate the relevance of this experience. Proposals submitted should include, in this section, descriptions of qualifying experience to include project descriptions, costs, and starting and completion dates of projects successfully completed. Also, include the name, address, and phone number of the responsible official of the customer organization who may be contacted.
(Vendor Provided See DMB Main Contract folder)



1B.202 STAFFING (SEE SECTION 1.201)

The written proposal should indicate the competence of personnel whom the Vendor intends to assign to the project as specified Section 1.2. Qualifications will be measured by education and /or experience, with particular reference to experience on projects similar to that described in the RFP. Emphasis will be placed upon the qualifications of Vendor's Project Manager and the Manager's dedicated management time as well as that of other Key Personnel working on this project.

For all personnel identified in Section 1.2, Vendor must provide resumes, which shall include detailed, chronological work experience. (Complied)

1B.203 PAST PERFORMANCE

Please list any contracts that you have had with the State in the last ten (10) years. N/A

1B.204 CONTRACT PERFORMANCE

Indicate if the Vendor has had a contract terminated for default in the last three (3) years. Termination for default is defined as notice to stop performance which was delivered to the Vendor due to the Vendor's non-performance or poor performance and the issue of performance was either (a) not litigated due to inaction on the part of the Vendor, or (b) litigated and determined that the Vendor was in default.

If no such terminations exist, the Vendor must affirmatively state this.

Bidder Response to Task:

No such terminations exist

Note: If the Vendor has had a contract terminated for default in this period, the Vendor shall submit full details including the other party's name, address, and phone number Purchasing Operations will evaluate the facts and may, at its sole discretion, reject the proposal on the grounds of past experience.

Termination: _____

Reason: _____

1B.300 Disclosures

1B.301 DISCLOSURE OF LITIGATION (RESERVED)

1B.302 Disclosure of RFP Assistance (RESERVED)

1B.303 MIDEAL - EXTENDED PURCHASING (SEE ARTICLE 2, SECTION 2.320) (Reserved)



Article 1, Attachment A

Pricing



The McGraw-Hill Companies



Charlie Astorino
District Manager

Charlie_Astorino@ctb.com

445 Northwood Drive
Guilford, CT 06437
203-457-2284 Tel
203-457-2285 Fax

Mr. Douglas Collier
State of Michigan
Department of Management and Budget
Acquisition Services
2nd Floor, Mason Building
530 West Allegan Street
Lansing, Michigan 48933

Mr. Collier,

Thank you for your phone call today. Attached please find our revised pricing based on your request. CTB/McGraw-Hill has offered to increase the discount on all items by 5%. We recognize that this is a difficult financial time in Michigan and CTB/McGraw-Hill wants to remain a good partner with the state of Michigan.

It is our understanding that all TABE materials will be purchased directly from CTB/McGraw-Hill. Please note that while this pricing is valid for all orders placed with CTB/McGraw-Hill, this pricing does not extend to any other companies selling TABE materials.

Please call if you have any other questions.

Sincerely,

Charles Astorino
CTB/McGraw-Hill
District Manager

Cc: Andrea Kingman, CTB/McGraw-Hill, Product Manager
Michael LaBay, CTB/McGraw-Hill, Evaluation Consultant
Dr. Jack Thompson, CTB/McGraw-Hill, Eastern Region Vice President



Article 1, Attachment A—
Pricing

Administrator Texts	ISBN #	Qty.	Unit Cost	Sub Total	Discount	1st year Total	2nd year Total	3rd year Total	3 year Total
Administrator Guide	91497	47	\$60.00	\$2,820.00	15%	\$2,397.00	N/A	N/A	\$2,397.00
Norms Book	91496	94	\$19.00	\$1,786.00	15%	\$1,518.10	N/A	N/A	\$1,518.10
Test Administration Materials									
Survey Answer Sheets –stencil	78748-02	1175	\$ 31.00/50	\$36,425.00	20%	\$29,140.00	\$30,888.40	\$32,741.70	\$92,770.10
Locator Answer Sheets –stencil and scan	78746	235	\$ 31.00/50	\$7,285.00	15%	\$6,192.25	\$6,563.79	\$6,957.61	\$19,713.65
Survey Answer Sheets –scannable	78751	1175	\$ 31.00/50	\$36,425.00	20%	\$29,140.00	\$30,888.40	\$32,741.70	\$92,770.10
9/10 Locator Scoring Stencils	96425	94	\$21.00	\$1,974.00	15%	\$1,677.90	N/A	N/A	\$1,677.90
TABE 9 Scoring Stencils–Level E	96434	94	\$42.00	\$3,948.00	15%	\$3,355.80	N/A	N/A	\$3,355.80
TABE 10 Scoring Stencils–Level E	96435	94	\$42.00	\$3,948.00	15%	\$3,355.80	N/A	N/A	\$3,355.80
TABE 9 Scoring Stencils–Level M	96436	94	\$42.00	\$3,948.00	15%	\$3,355.80	N/A	N/A	\$3,355.80
TABE 10 Scoring Stencils–Level M	96437	94	\$42.00	\$3,948.00	15%	\$3,355.80	N/A	N/A	\$3,355.80
TABE 9 Scoring Stencils –Level D	96438	94	\$42.00	\$3,948.00	15%	\$3,355.80	N/A	N/A	\$3,355.80
TABE 10 Scoring Stencils –Level D	96439	94	\$42.00	\$3,948.00	15%	\$3,355.80	N/A	N/A	\$3,355.80
TABE 9 Scoring Stencils–Level A	96440	94	\$42.00	\$3,948.00	15%	\$3,355.80	N/A	N/A	\$3,355.80
TABE 10 Scoring Stencils–Level A	96441	94	\$42.00	\$3,948.00	15%	\$3,355.80	N/A	N/A	\$3,355.80
Locator Test Books	10403	47	\$ 58.00/25	\$2,726.00	15%	\$2,317.10	N/A	N/A	\$2,317.10
TABE 9 Survey Test Books–Level E	10414	47	\$ 101.00/25	\$4,747.00	15%	\$4,034.95	N/A	N/A	\$4,034.95
TABE 10 Survey Test Books–Level E	10415	47	\$ 101.00/25	\$4,747.00	15%	\$4,034.95	N/A	N/A	\$4,034.95
TABE 9 Survey Test Books–Level M	10416	47	\$ 101.00/25	\$4,747.00	15%	\$4,034.95	N/A	N/A	\$4,034.95
TABE 10 Survey Test Books–Level M	10417	47	\$ 101.00/25	\$4,747.00	15%	\$4,034.95	N/A	N/A	\$4,034.95
TABE 9 Survey Test Books–Level D	10418	47	\$ 101.00/25	\$4,747.00	15%	\$4,034.95	N/A	N/A	\$4,034.95
TABE 10 Survey Test Books–Level D	10419	47	\$ 101.00/25	\$4,747.00	15%	\$4,034.95	N/A	N/A	\$4,034.95
TABE 9 Survey Test Books–Level A	10420	47	\$ 101.00/25	\$4,747.00	15%	\$4,034.95	N/A	N/A	\$4,034.95
TABE 10 Survey Test Books–Level A	10421	47	\$ 101.00/25	\$4,747.00	15%	\$4,034.95	N/A	N/A	\$4,034.95
9/10 Test Books Practice Exercise/ Locator Test	10403	128	\$ 58.00/25	\$7,424.00	15%	\$6,310.40	N/A	N/A	\$6,310.40
9/10 Practice Exercise/Locator Test CompuScan 48 Column Answer Sheets	78746	500	\$ 31.00/50	\$15,500.00	20%	\$12,400.00	\$13,144.00	\$13,932.64	\$39,476.64
Shipping and Handling			124.00/\$175.00	\$6,003.00		\$6,003.00	\$6,003.00	\$6,003.00	\$18,009.00



Software/Support	ISBN #	Qty.	Unit Cost	Cost Yr. 1	Cost Yr. 2	Cost Yr. 3	Total
TestMate for Windows Scoring Software	86480	26	\$3,180.00	\$82,940.00	N/A	N/A	\$82,940.00
TestMate TABE Annual Support	86480-01	47	\$797.00	\$37,459.00	\$39,707.00	\$42,089.00	\$119,255.00
TESTMATE Windows Upgrade	86483	21	\$711.00	\$14,931.00	N/A	N/A	\$14,931.00
Shipping and Handling		47	\$65.00	\$3,055.00			\$3,055.00
Additional Software and Tech support as needed for future purchases through 12/31/06	Unit Cost for Software 86480	\$3,180.00	Annual Cost for Maintenance 86480-01	\$797.00			



See list below for Qty./ needs per location

Facility Name	ISBN Number	Quantity
OJIBWAY		
Computer Software and Tech Support		
TestMate for Windows Scoring Software	86480	1
TestMate TABE Annual Support	86480-01	1
BARAGA		
Computer Software and Tech Support		
<i>No TestMate--annual support only</i>	86480-01	1
MARQUETTE BRANCH		
Computer Software and Tech Support		
TestMate for Windows Scoring Software	86480	1
TestMate TABE Annual Support	86480-01	1
ALGER		
Computer Software and Tech Support		
<i>No TestMate--annual support only</i>	86480-01	1
CAMP CUSINO		
Computer Software and Tech Support		
<i>No TestMate--annual support only</i>	86480-01	1
NEWBERRY		
Computer Software and Tech Support		
TestMate for Windows Scoring Software	86480	1
TestMate TABE Annual Support	86480-01	1
CAMP MANISTIQUE		
Computer Software and Tech Support		
<i>No TestMate--annual support only</i>	86480-01	1
CHIPPEWA		
Computer Software and Tech Support		
TestMate for Windows Scoring Software	86480	1
TestMate TABE Annual Support	86480-01	1



STRAITS		
Computer Software and Tech Support		
<i>No TestMate--annual support only</i>	86480-01	1
HIAWATHA		
Computer Software and Tech Support		
TestMate for Windows Scoring Software	86480	1
TestMate TABE Annual Support	86480-01	1
KINROSS		
Computer Software and Tech Support		
<i>No TestMate--annual support only</i>	86480-01	1
PUGSLEY		
Computer Software and Tech Support		
TestMate for Windows Scoring Software	86480	1
TestMate TABE Annual Support	86480-01	1
OAKS		
Computer Software and Tech Support		
<i>No TestMate--annual support only</i>	86480-01	1
STANDISH		
Computer Software and Tech Support		
<i>No TestMate--annual support only</i>	86480-01	1
BROOKS		
Computer Software and Tech Support		
TestMate for Windows Scoring Software	86480	1
TestMate TABE Annual Support	86480-01	1
MUSKEGON		
Computer Software and Tech Support		
TestMate for Windows Scoring Software	86480	1
TestMate TABE Annual Support	86480-01	1
WEST SHORELINE		
Computer Software and Tech Support		
<i>No TestMate--annual support only</i>	86480-01	1



CARSON CITY		
Computer Software and Tech Support		
TestMate for Windows Scoring Software	86480	1
TestMate TABE Annual Support	86480-01	1
BOYER ROAD		
Computer Software and Tech Support		
<i>No TestMate--annual support only</i>	86480-01	1
MID-MICHIGAN		
Computer Software and Tech Support		
<i>No TestMate--annual support only</i>	86480-01	1
PINE RIVER		
Computer Software and Tech Support		
TestMate for Windows Scoring Software	86480	1
TestMate TABE Annual Support	86480-01	1
ST. LOUIS		
Computer Software and Tech Support		
TestMate for Windows Scoring Software	86480	1
TestMate TABE Annual Support	86480-01	1
SAGINAW		
Computer Software and Tech Support		
TestMate for Windows Scoring Software	86480	1
TestMate TABE Annual Support	86480-01	1
MTU		
Computer Software and Tech Support		
TestMate for Windows Scoring Software	86480	1
TestMate TABE Annual Support	86480-01	1
I-MAX		
Computer Software and Tech Support		
<i>No TestMate--annual support only</i>	86480-01	1



DEERFIELD		
Computer Software and Tech Support		
TestMate for Windows Scoring Software	86480	1
TestMate TABE Annual Support	86480-01	1
BELLAMY CREEK		
Computer Software and Tech Support		
TestMate for Windows Scoring Software	86480	1
TestMate TABE Annual Support	86480-01	1
RIVERSIDE		
Computer Software and Tech Support		
<i>No TestMate--annual support only</i>	86480-01	1
THUMB		
Computer Software and Tech Support		
TestMate for Windows Scoring Software	86480	1
TestMate TABE Annual Support	86480-01	1
MACOMB		
Computer Software and Tech Support		
TestMate for Windows Scoring Software	86480	1
TestMate TABE Annual Support	86480-01	1
COTTON		
Computer Software and Tech Support		
TestMate for Windows Scoring Software	86480	1
TestMate TABE Annual Support	86480-01	1
COOPER STREET		
Computer Software and Tech Support		
TestMate for Windows Scoring Software	86480	1
TestMate TABE Annual Support	86480-01	1
EGELER/RGC		
Computer Software and Tech Support		
TestMate for Windows Scoring Software	86480	1
TestMate TABE Annual Support	86480-01	1



PARNALL		
Computer Software and Tech Support		
<i>No TestMate--annual support only</i>	86480-01	1
SOUTHERN MICHIGAN		
Computer Software and Tech Support		
TestMate for Windows Scoring Software	86480	1
TestMate TABE Annual Support	86480-01	1
CRANE		
Computer Software and Tech Support		
TestMate for Windows Scoring Software	86480	1
TestMate TABE Annual Support	86480-01	1
CAMP BRANCH		
Computer Software and Tech Support		
<i>No TestMate--annual support only</i>	86480-01	1
LAKELAND		
Computer Software and Tech Support		
<i>No TestMate--annual support only</i>	86480-01	1
GUS HARRISON		
Computer Software and Tech Support		
TestMate for Windows Scoring Software	86480	1
TestMate TABE Annual Support	86480-01	1
PARR HIGHWAY		
Computer Software and Tech Support		
<i>No TestMate--annual support only</i>	86480-01	1
HURON VALLEY--MEN		
Computer Software and Tech Support		
<i>No TestMate--annual support only</i>	86480-01	1
HURON VALLEY--WOMEN		
Computer Software and Tech Support		
TestMate for Windows Scoring Software	86480	1
TestMate TABE Annual Support	86480-01	1



CAMP BRIGHTON		
Computer Software and Tech Support		
<i>No TestMate--annual support only</i>	86480-01	1
SCOTT		
Computer Software and Tech Support		
TestMate for Windows Scoring Software	86480	1
TestMate TABE Annual Support	86480-01	1
RYAN		
Computer Software and Tech Support		
TestMate for Windows Scoring Software	86480	1
TestMate TABE Annual Support	86480-01	1
MOUND		
Computer Software and Tech Support		
<i>No TestMate--annual support only</i>	86480-01	1
CAMP LEHMAN		
Computer Software and Tech Support		
<i>No TestMate--annual support only</i>	86480-01	1



Article 2 – General Terms and Conditions

2.010 Contract Structure and Administration

2.011 Definitions

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

- (a) "Days" means calendar days unless otherwise specified.
- (b) "24x7x365" means 24 hours a day, seven days a week, and 365 days a year (including the 366th day in a leap year).
- (c) "Additional Service" means any Services/Deliverables within the scope of the Contract, but not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration. "Additional Service" does not include New Work.
- (d) "Amendment Labor Rates" means the schedule of fully-loaded hourly labor rates attached as **Article 1, Attachment C**.
- (e) "Audit Period" has the meaning given in **Section 2.111**.
- (f) "Business Day," whether capitalized or not, shall mean any day other than a Saturday, Sunday or State-recognized legal holiday (as identified in the Collective Bargaining Agreement for State employees) from 8:00am EST through 5:00pm EST unless otherwise stated.
- (g) "Incident" means any interruption in Services.
- (h) "Business Critical" means any function identified in any Statement of Work as Business Critical.
- (i) "Deliverable" means physical goods and/or commodities as required or identified by a Statement of Work
- (j) "Key Personnel" means any Personnel designated in **Article 1, Section 1.201 and/or Attachment B**, as Key Personnel.
- (k) "New Work" means any Services/Deliverables outside the scope of the Contract and not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration. "New Work" does not include Additional Service.
- (l) "Services" means any function performed for the benefit of the State.
- (m) "State Location" means any physical location where the State performs work. State Location may include state-owned, leased, or rented space.
- (n) "Subcontractor" means a company Contractor delegates performance of a portion of the Services to, but does not include independent contractors engaged by Contractor solely in a staff augmentation role.
- (o) "Work in Process" means a Deliverable that has been partially prepared, but has not been presented to the State for Approval.

2.012 Attachments and Exhibits

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

2.013 Statements of Work

- (a) The parties agree that the Services/Deliverables to be rendered by Contractor pursuant to this Contract (and any future amendments of it) will be defined and described in detail in Statements of Work or Purchase Orders (PO) executed under this Contract. Contractor shall not be obliged or authorized to commence any work to implement a Statement of Work until authorized via a PO issued against this Contract, or an amendment to this Contract (see 2.106). Contractor shall perform in accordance with this Contract, including the Statements of Work/Purchase Orders executed under it.
- (b) Unless otherwise agreed by the parties, each Statement of Work (as defined in Article 1) will include, or incorporate by reference to the appropriate Contract Article 1 Attachment containing, the following information:
 - a description of the Services to be performed by Contractor under the Statement of Work;
 - a project schedule (including the commencement and completion dates for all tasks, subtasks (for all projects of sufficient duration and complexity to warrant sub task breakdown), and Deliverables;



- a list of the Deliverables to be provided, if any, including any particular specifications and acceptance criteria for such Deliverables, and the dates on which the Deliverables are scheduled to be completed and delivered to the State;
 - all Deliverable price schedules and other charges associated with the Statement of Work, the overall fixed price for such Statement of Work and any other appropriate pricing and payment terms;
 - a specification of Contractor's and the State's respective performance responsibilities with respect to the performance or completion of all tasks, subtasks and Deliverables;
 - a listing of any Key Personnel of Contractor and/or its Subcontractors for that Statement of Work and any future Statements of Work;
 - any other information or provisions the parties agree to include.
- (c) Reserved.
- (d) The initial Statements of Work, as of the Effective Date, are attached to this Contract.

2.014 Issuing Office

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

Douglas Collier

Office of Purchasing Operations
Department of Management and Budget
Mason Bldg, 2nd Floor
PO Box 30026
Lansing, MI 48909
Email collierd1@michigan.gov
Phone 517/ 335-4804

2.015 Contract Compliance Inspector

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

Ladean Watts-George

Department of Corrections
P.O. Box 30003
Lansing, MI 48909
georgelw@michigan.gov
517-373-3664

Shelley Warstler

Department of Information Technology
525 West Allegan
Lansing, MI 48913
warstlers@michigan.gov
517-335-4079

**2.016 Project Manager**

The following individual will oversee the project:

Julie L. DeRose

Department of Corrections
206 E. Michigan Avenue
P.O. Box 30003
Lansing, MI 48919
derosejl@michigan.gov
Telephone: 517-335-1388
FAX: 517-373-3882

2.020 Contract Objectives/Scope/Background**2.021 Background**

See Section 1.002.

2.022 Purpose

See Section 1.001.

2.023 Objectives and Scope

See Section 1.101.

2.024 Interpretation

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

2.025 Form, Function and Utility

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

2.030 Legal Effect and Term**2.031 Legal Effect**

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

**2.32 Contract Term**

This Contract is for a period of three years commencing on the date that the last signature required to make the Contract enforceable is obtained. All outstanding Purchase Orders shall also expire upon the termination (cancellation for any of the reasons listed in 2.210) of the Contract, unless otherwise extended pursuant to the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

2.033 Renewal(s)

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

2.040 Contractor Personnel**2.041 Contractor Personnel**

- (a) Personnel Qualifications. All persons assigned by Contractor to the performance of Services under this Contract shall be employees of Contractor or its majority-owned (directly or indirectly, at any tier) subsidiaries (or a State-approved Subcontractor) and shall be fully qualified to perform the work assigned to them. Contractor shall include a similar provision in any subcontract entered into with a Subcontractor. For the purposes of this Contract, independent contractors engaged by Contractor solely in a staff augmentation role shall be treated by the State as if they were employees of Contractor for this Contract only; however, the State understands that the relationship between Contractor and Subcontractor is an independent contractor relationship.
- (b) Key Personnel
- (i) In discharging its obligations under this Contract, Contractor shall provide the named Key Personnel on the terms indicated. **Exhibit C** provides an organization chart showing the roles of certain Key Personnel, if any.
 - (ii) Key Personnel shall be dedicated as defined in **Exhibit C** to the Project for its duration in the applicable Statement of Work with respect to other individuals designated as Key Personnel for that Statement of Work.
 - (iii) The State will have the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the State of the proposed assignment, will introduce the individual to the appropriate State representatives, and will provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State will provide a written explanation including reasonable detail outlining the reasons for the rejection. Additionally, the State's request shall be based on legitimate, good-faith reasons. Proposed alternative for the individual denied, shall be fully qualified for the position.
 - (iv) Contractor shall not remove any Key Personnel from their assigned roles or the Contract without the prior written consent of the State. If the Contractor does remove Key Personnel without the prior written consent of the State, it shall be considered an unauthorized removal ("Unauthorized Removal"). It shall not be considered an Unauthorized Removal if Key Personnel must be replaced for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation or for cause termination of the Key Personnel's employment. It shall not be considered an Unauthorized Removal if Key Personnel must be replaced because of promotions or other job movements allowed by Contractor personnel policies or Collective Bargaining Agreement(s) as long as the State receives prior written notice before shadowing occurs and Contractor provides thirty (30) days of shadowing unless parties agree to a different time period. The Contractor with the State shall review any Key Personnel replacements, and appropriate transition planning will be established. Any Unauthorized Removal may be considered by the State to be a material breach of the Contract, in respect of which the State may elect to exercise its rights under **Section 2.210**.
 - (v) It is acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of the Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under **Section 2.210**, the State may assess liquidated damages against Contractor as specified below.

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

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



- (c) Re-assignment of non-Key Personnel. Prior to re-deploying to other projects, at the completion of their assigned tasks on the Project, teams of its non-Key Personnel who are performing Services on-site at State facilities or who are otherwise dedicated primarily to the Project, Contractor will give the State at least ten (10) Business Days notice of the proposed re-deployment to give the State an opportunity to object to the re-deployment if the State reasonably believes such team's Contract responsibilities are not likely to be completed and approved by the State prior to the proposed date of re-deployment.
- (d) Re-assignment of Personnel at the State's Request. The State reserves the right to require the removal from the Project of Contractor personnel found, in the judgment of the State, to be unacceptable. The State's request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good-faith reasons. Replacement personnel for the removed person shall be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with removed personnel results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Service will not be counted in **Section 2.076** for a time as agreed to by the parties.
- (e) Staffing Levels.
- (i) All staff requirements not specified in the applicable Statement of Work or State-approved project plan as State personnel will be supplied by Contractor. This includes secretarial, clerical and Contract administration support staff necessary for Contractor to perform its obligations hereunder.
- (ii) Contractor shall provide sufficient personnel resources for the completion of Contract tasks indicated in Contractor's project plan approved by the State. If the level of personnel resources is insufficient to complete any Contractor Contract tasks in accordance with the Contract time schedule as demonstrated by Contractor's failure to meet mutually agreed to time schedules, Contractor shall promptly add additional qualified personnel resources to the performance of the affected tasks, at no additional charge to the State, in an amount sufficient to complete performance of Contractor's tasks in accordance with the Contract time schedule.
- (f) Personnel Turnover. The Parties agree that it is in their best interests to keep the turnover rate of employees of Contractor and its Subcontractors who are performing the Services to a reasonable minimum. Accordingly, if the State determines that the turnover rate of such employees is excessive and so notifies Contractor, Contractor will meet with the State to discuss the reasons for the turnover rate and otherwise use commercially reasonable efforts to minimize such turnover rate. If requested to do so by the State, Contractor will submit to the State its proposals for reducing the turnover rate to an acceptable level. In any event, notwithstanding the turnover of personnel, Contractor remains obligated to perform the Services without degradation and in accordance with the State-approved Contract schedule.
- (g) Location. All staff assigned by Contractor to work on the Contract will perform their duties either primarily at Contractor's offices and facilities or at State facilities. Without limiting the generality of the foregoing, Key Personnel will, at a minimum, spend at least the amount of time on-site at State facilities as indicated in the applicable Statement of Work. Subject to availability, selected Contractor personnel may be assigned office space to be shared with State personnel.

2.042 Contractor Identification

Contractor employees shall be clearly identifiable while on State property by wearing a State-issued badge, as required. Contractor employees are required to clearly identify themselves and the company they work for whenever making contact with State personnel by telephone or other means.

**2.043 Cooperation with Third Parties**

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

2.044 Subcontracting by Contractor

- (a) Contractor shall have full responsibility for the successful performance and completion of all of the Services and Deliverables. The State will consider Contractor to be the sole point of contact with regard to all contractual matters under this Contract, including payment of any and all charges for Services and Deliverables.
- (b) Contractor shall not delegate any duties under this Contract to a Subcontractor unless the Department of Management and Budget, Office of Purchasing Operations has given written consent to such delegation. The State shall have the right of prior written approval of all Subcontractors and to require Contractor to replace any Subcontractors found, in the reasonable judgment of the State, to be unacceptable. The State's request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good-faith reasons. Replacement Subcontractor(s) for the removed Subcontractor shall be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed Subcontractor, the State will agree to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with a removed Subcontractor results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in **Section 2.076** for a time agreed upon by the parties.
- (c) In any subcontracts entered into by Contractor for the performance of the Services, Contractor shall require the Subcontractor, to the extent of the Services to be performed by the Subcontractor, to be bound to Contractor by the terms of this Contract and to assume toward Contractor all of the obligations and responsibilities that Contractor, by this Contract, assumes toward the State. The State reserves the right to receive copies of and review all subcontracts, although Contractor may delete or mask any proprietary information, including pricing, contained in such contracts before providing them to the State. The management of any Subcontractor will be the responsibility of Contractor, and Contractor shall remain responsible for the performance of its Subcontractors to the same extent as if Contractor had not subcontracted such performance. Contractor shall make all payments to Subcontractors or suppliers of Contractor. Except as otherwise agreed in writing by the State and Contractor, the State will not be obligated to direct payments for the Services other than to Contractor. The State's written approval of any Subcontractor engaged by Contractor to perform any obligation under this Contract shall not relieve Contractor of any obligations or performance required under this Contract. Attached as **Exhibit E** is a list of the Subcontractors, if any, approved by the State as of the execution of this Contract, together with a copy of the applicable subcontract.
- (d) Except where specifically approved in writing by the State on a case-by-case basis, Contractor shall flow down the obligations in **Sections 2.040, 2.110, 2.150, 2.160, 2.171(c), 2.172(b), 2.180, 2.260, 2.276, 2.297** in all of its agreements with any Subcontractors.
- (e) The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the Contract.

2.045 Contractor Responsibility for Personnel

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

2.050 State Standards**2.051 Existing Technology Standards -**

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

2.052 PM Methodology Standards - RESERVED**2.053 Adherence to Portal Technology Tools –**

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

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

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

2.054 Acceptable Use Policy -

To the extent that Contractor has access to the State computer system, Contractor must comply with the State's Acceptable Use Policy, see <http://www.michigan.gov/ditservice/0,1607,7-179-25781-73760--,00.html>. All Contractor employees must be required, in writing, to agree to the State's Acceptable Use Policy before accessing the State system. The State reserves the right to terminate Contractor's access to the State system if a violation occurs.

2.060 Deliverables**2.061 Ordering**

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

2.62 Software –

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

2.063 Hardware - RESERVED**2.064 Equipment to be New and Prohibited Products - RESERVED**

2.070 Performance**2.071 Performance, In General**

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

2.072 Time of Performance

- (a) Contractor shall use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables in accordance with the time schedules contained in the Statements of Work and other Exhibits governing the work, and with professional quality.
- (b) Without limiting the generality of **Section 2.072(a)**, Contractor shall notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and, in such event, shall inform the State of the projected actual delivery date.
- (c) If Contractor believes that a delay in performance by the State has caused or will cause Contractor to be unable to perform its obligations in accordance with specified Contract time periods, Contractor shall notify the State in a timely manner and shall use commercially reasonable efforts to perform its obligations in accordance with such Contract time periods notwithstanding the State's failure. Contractor will not be in default for a delay in performance to the extent such delay is caused by the State.

2.073 Liquidated Damages - RESERVED**2.074 Bankruptcy**

If Contractor shall file for protection under the bankruptcy laws, or if an involuntary petition shall be filed against Contractor and not removed within thirty (30) days, or if the Contractor becomes insolvent, be adjudicated bankrupt, or if it should make a general assignment for the benefit of creditors, or if a receiver shall be appointed due to its insolvency, and Contractor and/or its affiliates are unable to provide reasonable assurances that Contractor and/or its affiliates can deliver the services provided herein, the State may, without prejudice to any other right or remedy, terminate this Contract, in whole or in part, and, at its option, may take possession of the "Work in Process" and finish such Works in Process by whatever appropriate method the State may deem expedient. Contractor will fix appropriate notices or labels on the Work in Process to indicate ownership by the State. To the extent reasonably possible, materials and Work in Process shall be stored separately from other stock and marked conspicuously with labels indicating ownership by the State.

To secure the State's progress payments before the delivery of any services or materials required for the execution of Contractor's obligations hereunder, and any work which Contractor may subcontract in the support of the performance of its obligations hereunder, title shall vest in the State to the extent the State has made progress payments hereunder.

2.075 Time is of the Essence

The Contractor agrees that time is of the essence in the performance of the Contractor's obligations under this Contract.

2.076 Service Level Agreements (SLAs) - RESERVED2.080 Delivery and Acceptance of Deliverables**2.081 Delivery Responsibilities**

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



- (a) Shipment responsibilities - Services performed/Deliverables provided under this Contract shall be delivered "F.O.B. Destination, within Government Premises." The Contractor shall have complete responsibility for providing all Services/Deliverables to all site(s) unless otherwise stated. Actual delivery dates will be specified on the individual purchase order.
- (b) Delivery locations - Services will be performed/Deliverables will be provided at every State of Michigan location within Michigan unless otherwise stated in the SOW. Specific locations will be provided by the State or upon issuance of individual purchase orders.
- (c) Damage Disputes - At the time of delivery to State Locations, the State shall examine all packages. The quantity of packages delivered shall be recorded and any obvious visible or suspected damage shall be noted at time of delivery using the shipper's delivery document(s) and appropriate procedures to record such. Where there is no obvious or suspected damage, all deliveries to a State Location must be opened by the State and the contents inspected for possible internal damage not visible externally within fourteen (14) days of receipt. Any damage must be reported to the Contractor within five (5) days of inspection. If this inspection does not occur and damages not reported within thirty (30) days of receipt, the cure for such damaged deliveries shall transfer to the delivery signing party.

2.082 Delivery of Deliverables

- (a) Where applicable, the Statements of Work/POs contain lists of the Deliverables to be prepared and delivered by Contractor including, for each Deliverable, the scheduled delivery date and a designation of whether the Deliverable is a document ("Written Deliverable"), a good ("Physical Deliverable") or a Service. All Deliverables shall be completed and delivered for State review and written approval and, where applicable, installed in accordance with the State-approved delivery schedule and any other applicable terms and conditions of the Contract.

2.083 Testing

- (a) Prior to delivering any of the above-mentioned Statement of Work Physical Deliverables or Services to the State, Contractor will first perform all required quality assurance activities to verify that the Physical Deliverable or Service is complete and in conformance with its specifications listed in the applicable Statement of Work or Purchase Order. Before delivering a Physical Deliverable or Service to the State, Contractor shall certify to the State that (1) it has performed such quality assurance activities, (2) it has performed any applicable testing, (3) it has corrected all material deficiencies discovered during such quality assurance activities and testing, (4) the Deliverable or Service is in a suitable state of readiness for the State's review and approval, and (5) the Deliverable/Service has all Critical Security patches/updates applied.
- (b) If a Deliverable includes installation at a State Location, then Contractor shall (1) perform any applicable testing, (2) correct all material deficiencies discovered during such quality assurance activities and testing, and (3) inform the State that the Deliverable is in a suitable state of readiness for the State's review and approval. To the extent that testing occurs at State Locations, the State shall be entitled to observe or otherwise participate in testing.

2.084 Approval of Deliverables, In General

- (a) All Deliverables (Physical Deliverables and Written Deliverables) and Services require formal written approval by the State, in accordance with the following procedures. Formal approval by the State requires that the Deliverable be confirmed in writing by the State to meet its specifications, which will include the successful completion of Testing as applicable in **Section 2.083**, to be led by the State with the support and assistance of Contractor. The parties acknowledge that the approval process set forth herein will be facilitated by ongoing consultation between the parties, visibility of interim and intermediate Deliverables and collaboration on key decisions.
- (b) The State's obligation to comply with any State Review Period is conditioned on the timely delivery of Deliverables/Services being reviewed.
- (c) Prior to commencement of its review or testing of a Deliverable/Service, the State may inspect the Deliverable/Service to confirm that all components of the Deliverable/Service have been delivered without material deficiencies. If the State determines that the Deliverable/Service has material deficiencies, the State may refuse delivery of the Deliverable/Service without performing any further inspection or testing of the Deliverable/Service.



Otherwise, the review period will be deemed to have started on the day the State receives the Deliverable or the Service begins, and the State and Contractor agree that the Deliverable/Service is ready for use and, where applicable, certification by Contractor in accordance with **Section 2.083(a)**.

- (d) The State will approve in writing a Deliverable/Service upon confirming that it conforms to and, performs in accordance with, its specifications without material deficiency. The State may, but shall not be required to, conditionally approve in writing a Deliverable/Service that contains material deficiencies if the State elects to permit Contractor to rectify them post-approval. In any case, Contractor will be responsible for working diligently to correct within a reasonable time at Contractor's expense all deficiencies in the Deliverable/Service that remain outstanding at the time of State approval.
- (e) If, after three (3) opportunities (the original and two repeat efforts), Contractor is unable to correct all deficiencies preventing Final Acceptance of a Deliverable/Service, the State may: (i) demand that Contractor cure the failure and give Contractor additional time to cure the failure at the sole expense of Contractor; or (ii) keep the Contract in force and do, either itself or through other parties, whatever Contractor has failed to do, in which event Contractor shall bear any excess expenditure incurred by the State in so doing beyond the Contract price for such Deliverable/Service and will pay the State an additional sum equal to ten percent (10%) of such excess expenditure to cover the State's general expenses provided the State can furnish proof of such general expenses; or (iii) terminate the particular Statement of Work for default, either in whole or in part by notice to Contractor provided Contractor is unable to cure such breach. Notwithstanding the foregoing, the State shall not use, as a basis for exercising its termination rights under this Section, deficiencies discovered in a repeat State Review Period that could reasonably have been discovered during a prior State Review Period.
- (f) The State, at any time and in its reasonable discretion, may halt the testing or approval process if such process reveals deficiencies in or problems with a Deliverable/Service in a sufficient quantity or of a sufficient severity as to make the continuation of such process unproductive or unworkable. In such case, the State may stop using the Service or return the applicable Deliverable to Contractor for correction and re-delivery prior to resuming the testing or approval process.

2.085 Process For Approval of Written Deliverables

The State Review Period for Written Deliverables will be the number of days set forth in the applicable Statement of Work following delivery of the final version of the Deliverable (failing which the State Review Period, by default, shall be five (5) Business Days for Written Deliverables of one hundred (100) pages or less and ten (10) Business Days for Written Deliverables of more than one hundred (100) pages). The duration of the State Review Periods will be doubled if the State has not had an opportunity to review an interim draft of the Written Deliverable prior to its submission to the State. The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Deliverable is approved in the form delivered by Contractor or describing any deficiencies that must be corrected prior to approval of the Deliverable (or at the State's election, subsequent to approval of the Deliverable). If the State delivers to Contractor a notice of deficiencies, Contractor will correct the described deficiencies and within thirty (30) Business Days resubmit the Deliverable in a form that shows all revisions made to the original version delivered to the State. Contractor's correction efforts will be made at no additional charge. Upon receipt of a corrected Deliverable from Contractor, the State will have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Deliverable to confirm that the identified deficiencies have been corrected.

2.086 Process for Approval of Services

The State Review Period for approval of Services is governed by the applicable Statement of Work (failing which the State Review Period, by default, shall be thirty (30) Business Days for Services). The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Service is approved in the form delivered by Contractor or describing any deficiencies that must be corrected prior to approval of the Services (or at the State's election, subsequent to approval of the Service). If the State delivers to Contractor a notice of deficiencies, Contractor will correct the described deficiencies and within thirty (30) Business Days resubmit the Service in a form that shows all revisions made to the original version delivered to the State. Contractor's correction efforts will be made at no additional charge.



Upon implementation of a corrected Service from Contractor, the State will have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Service for conformity and that the identified deficiencies have been corrected.

2.087 Process for Approval of Physical Deliverables

The State Review Period for approval of Physical Deliverables is governed by the applicable Statement of Work (failing which the State Review Period, by default, shall be thirty (30) continuous Business Days for a Physical Deliverable). The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Deliverable is approved in the form delivered by Contractor or describing any deficiencies that must be corrected prior to approval of the Deliverable (or at the State's election, subsequent to approval of the Deliverable). If the State delivers to Contractor a notice of deficiencies, Contractor will correct the described deficiencies and within thirty (30) Business Days resubmit the Deliverable in a form that shows all revisions made to the original version delivered to the State. Contractor's correction efforts will be made at no additional charge. Upon receipt of a corrected Deliverable from Contractor, the State will have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Deliverable to confirm that the identified deficiencies have been corrected.

2.088 Final Acceptance

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

2.090 Financial

2.091 Pricing

- (a) Fixed Prices for Services/Deliverables
Each Statement of Work/PO issued under this Contract shall specify (or indicate by reference to the appropriate Contract Exhibit) the firm, fixed prices for all Services/Deliverables, and the associated payment milestones and payment amounts. To the extent the parties agree that certain specific Services will be provided on a time and materials basis, such Services shall be provided at the Amendment Labor Rates (**Article 1, Attachment C (Reserved)**). The State may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.
- (b) Adjustments for Reductions in Scope of Services/Deliverables
If the scope of the Services/Deliverables under any Statement of Work issued under this Contract is subsequently reduced by the State, the parties shall negotiate an equitable reduction in Contractor's charges under such Statement of Work commensurate with the reduction in scope, using the rates in **Article 1, Attachment** unless specifically identified in an applicable Statement of Work.
- (c) Services/Deliverables Covered
For all Services/Deliverables to be provided by Contractor (and its Subcontractors, if any) under this Contract, the State shall not be obligated to pay any amounts in addition to the charges specified in this Contract.
- (d) Labor Rates
All time and material charges will be at the rates specified in **Article 1, Attachment C**.

2.092 Invoicing and Payment Procedures and Terms

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



- (ii) Each Contractor invoice will show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements. The charges for Services billed on a time and materials basis shall be determined based on the actual number of hours of Services performed, at the applicable Labor Rates specified in **Article 1, Attachment C**.

Invoices for Services performed on a time and materials basis will show, for each individual, the number of hours of Services performed during the billing period, the billable skill/labor category for such person and the applicable hourly billing rate. Prompt payment by the State is contingent on the Contractor's invoices showing the amount owed by the State minus any holdback amount to be retained by the State in accordance with **Section 2.094**.

- (iii) Correct invoices will be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 Public Act No. 279, MCL 17.51 et seq., within forty-five (45) days after receipt, provided the State determines that the invoice was properly rendered.
- (b) Taxes (See Section 2.305 and Article 3, Section 3.022-3.024 for additional)
The State is exempt from Federal Excise Tax, State and Local Sales Taxes, and Use Tax with respect to the sale to and use by it of tangible personal property. Such taxes shall not be included in Contract prices as long as the State maintains such exemptions. Copies of all tax exemption certificates shall be supplied to Contractor, if requested.
- (c) Out-of-Pocket Expenses
Contractor acknowledges that the out-of-pocket expenses that Contractor expects to incur in performing the Services/ providing the Deliverables (such as, but not limited to, travel and lodging, document reproduction and shipping, and long distance telephone) are included in Contractor's fixed price for each Statement of Work. Accordingly, Contractor's out-of-pocket expenses are not separately reimbursable by the State unless, on a case-by-case basis for unusual expenses, the State has agreed in advance and in writing to reimburse Contractor for such an expense at the State's current travel reimbursement rates. See http://www.mi.gov/dmb/0,1607,7-150-9141_13132---,00.html for current rates.
- (d) Pro-ration
To the extent there are any Services that are to be paid for on a monthly basis, the cost of such Services shall be pro-rated for any partial month.
- (e) Antitrust Assignment
The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.
- (f) Final Payment
The making of final payment by the State to Contractor does not constitute a waiver by either party of any rights or other claims as to the other party's continuing obligations under the Contract, nor will it constitute a waiver of any claims by one party against the other arising from unsettled claims or failure by a party to comply with this Contract, including claims for Services and Deliverables not reasonably known until after acceptance to be defective or substandard. Contractor's acceptance of final payment by the State under this Contract shall constitute a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still unsettled.

2.093 State Funding Obligation

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

**2.094 Holdback**

The State shall have the right to hold back, as a retainage, an amount equal to 100 percent (100%) of all amounts invoiced by Contractor for Services/Deliverables. The amounts held back shall be released to Contractor after the State has granted Final Acceptance.

2.095 Electronic Payment Availability

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

2.100 Contract Management**2.101 Contract Management Responsibility**

- (a) Contractor shall have overall responsibility for managing and successfully performing and completing the Services/Deliverables, subject to the overall direction and supervision of the State and with the participation and support of the State as specified in this Contract. Contractor's duties will include monitoring and reporting the State's performance of its participation and support responsibilities (as well as Contractor's own responsibilities) and providing timely notice to the State in Contractor's reasonable opinion if the State's failure to perform its responsibilities in accordance with **Article 1, Attachment E** (Project Plan) is likely to delay the timely achievement of any Contract tasks.
- (b) The Services/Deliverables will be provided by the Contractor either directly or through its affiliates, subsidiaries, subcontractors or resellers. Regardless of the entity providing the Service/Deliverable, the Contractor will act as a single point of contact coordinating these entities to meet the State's need for Services/Deliverables. Nothing in this Contract, however, shall be construed to authorize or require any party to violate any applicable law or regulation in its performance of this Contract.

2.102 Problem and Contract Management Procedures

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

2.103 Reports and Meetings

- (a) Reports.
 - Within thirty (30) days after the Effective Date, the parties shall determine an appropriate set of periodic reports to be issued by Contractor to the State. Such reports may include:
 - (i) separately address Contractor's performance in each area of the Services;
 - (ii) for each area of the Services, assess the degree to which Contractor has attained or failed to attain the pertinent objectives in that area, including on-time completion and delivery of Deliverables;
 - (iii) explain the reasons for any failure to achieve on-time completion and delivery of Deliverables and include a plan for corrective action where appropriate;
 - (iv) describe any circumstances that Contractor anticipates will impair or prevent on-time completion and delivery of Deliverables in upcoming reporting periods;
 - (v) include plans for corrective action or risk mitigation where appropriate and describe the status of ongoing problem resolution efforts;
 - (vi) provide reports setting forth a comparison of actual hours spent by Contractor (including its augmented personnel and Subcontractors) in performing the Project versus hours budgeted by Contractor.
 - (vii) set forth a record of the material personnel changes that pertain to the Services and describe planned changes during the upcoming month that may affect the Services.
 - (viii) include such documentation and other information may be mutually agreed to verify compliance with, and meeting the objectives of, this Contract.
 - (ix) set forth an updated schedule that provides information on the status of upcoming Deliverables, expected dates of delivery (or redelivery) of such Deliverables and estimates on timing for completion of the Project.



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

2.104 System Changes

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

2.105 Reserved

2.106 Change Requests

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

If the State requests or directs the Contractor to perform any Services/Deliverables that are outside the scope of the Contractor's responsibilities under the Contract ("New Work"), the Contractor must notify the State promptly, and before commencing performance of the requested activities, that it believes the requested activities are New Work. If the Contractor fails to notify the State before commencing performance of the requested activities, any such activities performed before notice is given by the Contractor shall be conclusively considered to be in-scope Services/Deliverables, not New Work.

If the State requests or directs the Contractor to perform any services or provide deliverables that are consistent with and similar to the Services/Deliverables being provided by the Contractor under the Contract, but which the Contractor reasonably and in good faith believes are not included within the Statements of Work, then before performing such services or providing such deliverables, the Contractor shall notify the State in writing that it considers the services or deliverables to be an Additional Service/Deliverable for which the Contractor should receive additional compensation. If the Contractor does not so notify the State, the Contractor shall have no right to claim thereafter that it is entitled to additional compensation for performing that service or providing that deliverable. If the Contractor does so notify the State, then such a service or deliverable shall be governed by the Change Request procedure in this Section.

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

- (a) Change Requests
- (i) State Requests
If the State should require Contractor to perform New Work, Additional Services or make changes to the Services that would affect the Contract completion schedule or the amount of compensation due Contractor (a "Change"), the State shall submit a written request for Contractor to furnish a proposal for carrying out the requested Change (a "Change Request").
 - (ii) Contractor Recommendations
Contractor shall be entitled to propose a Change to the State, on its own initiative, should it be of the opinion that this would benefit the Contract.



- (iii) Upon receipt of a Change Request or on its own initiative, Contractor shall examine the implications of the requested Change on the technical specifications, Contract schedule and price of the Deliverables and Services and shall submit to the State without undue delay a written proposal for carrying out the Change. Contractor's proposal will include any associated changes in the technical specifications, Contract schedule and price and method of pricing of the Services. If the Change is to be performed on a time and materials basis, the Amendment Labor Rates shall apply to the provision of such Services. If Contractor provides a written proposal and should Contractor be of the opinion that a requested Change is not to be recommended, it shall communicate its opinion to the State but shall nevertheless carry out the Change as specified in the written proposal if the State directs it to do so.
- (iv) By giving Contractor written notice within a reasonable time, the State shall be entitled to accept a Contractor proposal for Change, to reject it or to reach another agreement with Contractor. Should the parties agree on carrying out a Change, a written Contract Change Notice shall be prepared and issued under this Contract, describing the Change and its effects on the Services and any affected components of this Contract (a "Contract Change Notice").
- (v) No proposed Change shall be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the Department of Management and Budget, Office of Purchasing Operations.
- (vi) If the State requests or directs Contractor to perform any activities that Contractor believes constitute a Change, Contractor must notify the State that it believes the requested activities are a Change prior to commencing the performance of the requested activities. If Contractor fails to so notify the State prior to commencing performance of the requested activities, such activities shall be considered to be performed gratuitously by Contractor, and Contractor shall not have any right thereafter to assert any claim for additional compensation or time for the performance of such activities. If Contractor commences performance of gratuitous services outside the scope of this Contract and subsequently elects to stop performing such out-of-scope services, Contractor must, at the request of the State, back out or reverse any changes resulting from such performance that would adversely affect the Contract.

2.107 Management Tools

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

2.110 Records and Inspections

2.111a Records and Inspections

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



- (b) Examination of Records. Contractor agrees that the State, including its duly authorized representatives, until the expiration of seven (7) years following the creation of the material (collectively, the "Audit Period"), shall, upon twenty (20) days prior written notice, have access to and the right to examine and copy any of Contractor's books, records, documents and papers pertinent to establishing Contractor's compliance with the Contract and with applicable laws and rules, including the State's procurement rules, regulations and procedures, and actual performance of the Contract for the purpose of conducting an audit, examination, excerpt and/or transcription but the State shall not have access to any information deemed confidential to Contractor to the extent such access would require such confidential information to become publicly available. This provision also applies to the books, records, accounts, documents and papers, in print or electronic form, of any parent, affiliated or subsidiary organization of Contractor, or any Subcontractor of Contractor performing services in connection with the Contract.
- (c) Retention of Records. Contractor shall maintain at least until the end of the Audit Period all pertinent financial and accounting records (including time sheets and payroll records, and information pertaining to the Contract and to the Services, equipment, and commodities provided under the Contract) pertaining to the Contract in accordance with generally accepted accounting principles and other procedures specified in this Section. Financial and accounting records shall be made available, upon request, to the State at any time during the Audit Period. If an audit, litigation, or other action involving Contractor's records is initiated before the end of the Audit Period, the records must be retained until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.
- (d) Audit Resolution. If necessary, the Contractor and the State shall meet to review each audit report promptly after issuance. The Contractor will respond to each audit report in writing within thirty (30) days from receipt of such report, unless a shorter response time is specified in such report. The Contractor and the State shall develop, agree upon and monitor an action plan to promptly address and resolve any deficiencies, concerns, and/or recommendations in such audit report.

2.111b Records and Inspections - RESERVED

2.112 Errors

- (a) If the audit demonstrates any errors in the statements provided to the State, then the amount in error shall be reflected as a credit or debit on the next invoice and in subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried for more than four (4) quarterly statements. If a balance remains after four (4) quarterly statements, then the remaining amount will be due as a payment or refund within forty-five (45) days of the last quarterly statement that the balance appeared on or termination of the contract, whichever is earlier.
- (b) In addition to other available remedies, the difference between the payment received and the correct payment amount is greater than ten percent (10%), then the Contractor shall pay all of the reasonable costs of the audit.

2.120 State Responsibilities

2.121 State Performance Obligations

- (a) Equipment and Other Resources. To facilitate Contractor's performance of the Services/Deliverables, the State shall provide to Contractor such equipment and resources as identified in the Statements of Work or other Contract Exhibits as items to be provided by the State.
- (b) Facilities. The State shall designate space as long as it is available and as provided in the Statement of Work, to house Contractor's personnel whom the parties agree will perform the Services/Deliverables at State facilities (collectively, the "State Facilities"). Contractor shall have reasonable access to, and unless agreed otherwise by the parties in writing shall observe and comply with all rules and regulations relating to, each of the State Facilities (including hours of operation) used by Contractor in the course of providing the Services. Contractor agrees that it will not, without the prior written consent of the State, use any State Facilities or access any State information systems provided for Contractor's use, or to which Contractor otherwise gains access in the course of performing the Services, for any purpose other than providing the Services to the State.
- (c) Return. Contractor shall be responsible for returning to the State any State-furnished equipment, facilities and other resources when no longer required for the Contract in the same condition as when provided by the State, reasonable wear and tear excepted.



- (d) Except as otherwise provided in **Section 2.220**, the State's failure to perform its responsibilities as set forth in this Contract shall not be deemed to be grounds for termination by Contractor. However, Contractor will not be liable for any default or delay in the performance of its obligations under this Contract to the extent such default or delay is caused by nonperformance of the State's obligations under this Contract, provided Contractor provides the State with reasonable written notice of such nonperformance and Contractor uses commercially reasonable efforts to perform notwithstanding the State's failure to perform. In addition, if the State's nonperformance of its responsibilities under this Contract materially increases the time required for Contractor's performance or Contractor's cost of performance, Contractor shall be entitled to seek an equitable extension via the Change Request process described in **Section 2.106**.

2.130 Security

2.131 Background Checks

The Contractor shall authorize the investigation of its personnel proposed to have access to State facilities and systems on a case by case basis. The scope of the background check is at the discretion of the State and the results will be used to determine Contractor personnel eligibility for working within State facilities and systems. Such investigations will include Michigan State Police Background checks (ICHAT) and may include the National Crime Information Center (NCIC) Finger Prints. Proposed Contractor personnel may be required to complete and submit an RI-8 Fingerprint Card for the NCIC Finger Print Check. Any request for background checks will be initiated by the State and will be reasonably related to the type of work requested. The MDOC requires anyone entering a correctional facility for any reason to have a LEIN check for security clearance.



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

2.140 *Reserved*

2.150 *Confidentiality*

2.151 Freedom of Information

All information in any proposal submitted to the State by Contractor and this Contract is subject to the provisions of the Michigan Freedom of Information Act, 1976 Public Act No. 442, as amended, MCL 15.231, et seq (the "FOIA").

2.152 Confidentiality

Contractor and the State each acknowledge that the other possesses and will continue to possess confidential information that has been developed or received by it. As used in this Section, "Confidential Information" of Contractor shall mean all non-public proprietary information of Contractor (other than Confidential Information of the State as defined below) which is marked confidential, restricted, proprietary or with a similar designation. "Confidential Information" of the State shall mean any information which is retained in confidence by the State (or otherwise required to be held in confidence by the State pursuant to applicable federal, state and local laws and regulations) or which, in the case of tangible materials provided to Contractor by the State pursuant to its performance under this Contract, is marked as confidential, proprietary or with a similar designation by the State. In the case of information of either Contractor or the State "Confidential Information" shall exclude any information (including this Contract) that is publicly available pursuant to the Michigan FOIA.

2.153 Protection of Confidential Information

The State and Contractor will each use at least the same degree of care to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication or dissemination of its own confidential information of like character, but in no event less than reasonable care. Neither Contractor nor the State will (i) make any use of the Confidential Information of the other except as contemplated by this Contract, (ii) acquire any right in or assert any lien against the Confidential Information of the other, or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information to the other party. Each party will limit disclosure of the other party's Confidential Information to employees and Subcontractors who must have access in order to fulfill the purposes of this Contract. Disclosure to, and use by, a Subcontractor is permissible where (A) use of a Subcontractor is authorized under this Contract, (B) such disclosure is necessary or otherwise naturally occurs in connection with work that is within such Subcontractor's scope of responsibility, and (C) Contractor obligates the Subcontractor in a written Contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor and of any Subcontractor having access or continued access to the State's Confidential Information may be required to execute an acknowledgment that the employee has been advised of Contractor's and the Subcontractor's obligations under this Section and of the employee's obligation to Contractor or Subcontractor, as the case may be, to protect such Confidential Information from unauthorized use or disclosure.

**2.154 Exclusions**

Notwithstanding the foregoing, the provisions of this Section will not apply to any particular information which the State or Contractor can demonstrate (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving party; (iii) was in the possession of the receiving party at the time of disclosure to it without an obligation of confidentiality; (iv) was received after disclosure to it from a third party who had a lawful right to disclose such information to it without any obligation to restrict its further disclosure; or (v) was independently developed by the receiving party without reference to Confidential Information of the furnishing party. Further, the provisions of this Section will not apply to any particular Confidential Information to the extent the receiving party is required by law to disclose such Confidential Information, provided that the receiving party (i) promptly provides the furnishing party with notice of the legal request, and (ii) assists the furnishing party in resisting or limiting the scope of such disclosure as reasonably requested by the furnishing party.

2.155 No Implied Rights

Nothing contained in this Section shall be construed as obligating a party to disclose any particular Confidential Information to the other party, or as granting to or conferring on a party, expressly or impliedly, any right or license to the Confidential Information of the other party.

2.156 Remedies

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

2.157 Security Breach Notification

In the event of a breach of this Section, Contractor shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor shall report to the State in writing any use or disclosure of Confidential Information, whether suspected or actual, other than as provided for by the Contract within ten (10) days of becoming aware of such use or disclosure or such shorter time period as is reasonable under the circumstances.

2.158 Survival

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

2.159 Destruction of Confidential Information

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

2.160 Proprietary Rights**2.161a Ownership - RESERVED****2.161b Cross-License - RESERVED****2.161c License**

- a. Contractor shall be providing to the State Contractor's proprietary, copyrighted, trade secret test material titled *Testing of Adult Basic Education 9 & 10 (TABE)* in both paper-and-pencil format (TABE testing materials) and software (TABE Software) for installation on PCs. The Contractor shall grant to the State a non-exclusive right and license to use the TABE testing materials and TABE Software as furnished under the Contract in the State's Department of Corrections system during the term of the Contract and any renewals or extensions of the Contract, solely for the purposes of the Contract. Such license shall not be perpetual and shall only continue during the term of the Contract and any renewals or extensions thereof. The TABE Software shall be provided to the State during the Term of the Contract (including any renewals or extensions) under the terms and conditions of the Subscriber License, a sample of which is attached hereto and made a part hereof. Subscriber License fees are stated in the price of this Contract. No other rights are granted by the Contractor with respect to the TABE testing materials or TABE Software.
- b. The State understands that the TABE testing materials and TABE Software contain assessment tests which have been validated and verified by CTB and any modifications could invalidate the test results. Therefore, no permission is given to modify any of the TABE testing materials or TABE Software. Furthermore, no permission is given to copy (except for backup purposes of the TABE Software) or reproduce any of the TABE testing materials or TABE Software or to sublicense any use thereof to a third party or to transfer the TABE Software to another entity of the State outside of the Department of Corrections. The State shall not reverse engineer, decompile, or otherwise tamper with the TABE Software.
- c. Nor shall the State or its agents take any actions that may impair or otherwise interfere with the intellectual property rights or security of Contractor. Upon termination of the Contract for any reason, all TABE Software will be promptly returned to the Contractor, except that the physical copies of the tests and test materials received and paid for by the State may be retained by the State.

2.162 Source Code Escrow - RESERVED**2.163 Rights in Data**

- (a) The State will be and remain the owner of all data made available by the State to Contractor or its agents, Subcontractors or representatives pursuant to the Contract. Contractor will not use the State's data for any purpose other than providing the Services, nor will any part of the State's data be disclosed, sold, assigned, leased or otherwise disposed of to the general public or to specific third parties or commercially exploited by or on behalf of Contractor, nor will any employee of Contractor other than those on a strictly need to know basis have access to the State's data. Contractor will not possess or assert any lien or other right against the State's data. Without limiting the generality of this Section, Contractor shall only use personally identifiable information as strictly necessary to provide the Services and shall disclose such information only to its employees who have a strict need to know such information. Contractor shall comply at all times with all laws and regulations applicable to such personally identifiable information.
- (b) The State is and shall remain the owner of all State-specific data pursuant to the Contract. The State may use the data provided by the Contractor for any purpose. The State will not possess or assert any lien or other right against the Contractor's data. Without limiting the generality of this Section, the State shall only use personally identifiable information as strictly necessary to utilize the Services and shall disclose such information only to its employees who have a strict need to know such information, except as provided by law. The State shall comply at all times with all laws and regulations applicable to such personally identifiable information. Other material developed and provided to the State shall remain the State's sole and exclusive property.

**2.164 Ownership of Materials**

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

2.165 Standard Software

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

2.166 Pre-existing Materials for Custom Software Deliverables

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

2.167 General Skills

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

2.170 Warranties And Representations**2.171 Warranties and Representations**

The Contractor represents and warrants:

- (a) It is capable in all respects of fulfilling and shall fulfill all of its obligations under this Contract. The performance of all obligations under this Contract shall be provided in a timely, professional, and workman-like manner and shall meet the performance and operational standards required under this Contract.
- (b) The Contract Appendices, Attachments and Exhibits identify the equipment and software and services necessary for the Deliverable(s) to perform and Services to operate in compliance with the Contract's requirements and other standards of performance.
- (c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by Contractor under this Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by Contractor to the State under this Contract, nor their use by the State, will infringe the patent, copyright, trade secret, or other proprietary rights of any third party.



- (d) If, under this Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to such items in this Contract, Contractor shall assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.
- (e) The contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into this Contract, on behalf of Contractor.
- (f) It is qualified and registered to transact business in all locations where required.
- (g) Neither the Contractor nor any Affiliates, nor any employee of either, has, shall have, or shall acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under this Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor shall notify the State within two (2) days of any such interest that may be incompatible with the interests of the State.
- (h) Neither Contractor nor any Affiliates, nor any employee of either has accepted or shall accept anything of value based on an understanding that the actions of the Contractor or Affiliates or employee on behalf of the State would be influenced. Contractor shall not attempt to influence any State employee by the direct or indirect offer of anything of value.
- (i) Neither Contractor nor any Affiliates, nor any employee of either has paid or agreed to pay any person, other than bona fide employees and consultants working solely for Contractor or such Affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.
- (j) The prices proposed by Contractor were arrived at independently, without consultation, communication, or agreement with any other bidder for the purpose of restricting competition; the prices quoted were not knowingly disclosed by Contractor to any other bidder; and no attempt was made by Contractor to induce any other person to submit or not submit a proposal for the purpose of restricting competition.
- (k) All financial statements, reports, and other information furnished by Contractor to the State as part of its response to the RFP or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Contractor as of the respective dates, or for the respective periods, covered by such financial statements, reports, other information. Since the respective dates or periods covered by such financial statements, reports, or other information, there have been no material adverse change in the business, properties, financial condition, or results of operations of Contractor.
- (m) All written information furnished to the State by or behalf of Contractor in connection with this Contract, including its bid, is true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make such information not misleading.
- (n) It is not in material default or breach of any other contract or agreement that it may have with the State or any of its departments, commissions, boards, or agencies. Contractor further represents and warrants that it has not been a party to any contract with the State or any of its departments that was terminated by the State or such department within the previous five (5) years for the reason that Contractor failed to perform or otherwise breached an obligation of such contract.

2.172 Software Warranties -

(a) Performance Warranty

The Contractor represents and warrants that Deliverables, after Final Acceptance, will perform and operate in compliance with the requirements and other standards of performance contained in this Contract (including all descriptions, specifications and drawings made a part of the Contract) for a period of ninety (90) days. In the event of a breach of this warranty, Contractor will promptly correct the affected Deliverable(s) at no charge to the State.



(b) No Surreptitious Code Warranty

The Contractor represents and warrants that no copy of licensed Software provided to the State contains or will contain any Self-Help Code or any Unauthorized Code as defined below. This warranty is referred to in this Contract as the “No Surreptitious Code Warranty.”

As used in this Contract, “Self-Help Code” means any back door, time bomb, drop dead device, or other software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than the licensee of the software. Self-Help Code does not include Software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee’s computer system(s) (e.g. remote access via modem) for purposes of maintenance or technical support.

As used in this Contract, “Unauthorized Code” means any virus, Trojan horse, spyware, worm or other Software routines or components designed to permit unauthorized access to disable, erase, or otherwise harm software, equipment, or data; or to perform any other such actions. The term Unauthorized Code does not include Self-Help Code. Unauthorized Code does not include Software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee’s computer system(s) (e.g. remote access via modem) for purposes of maintenance or technical support.



In addition, Contractor will use up-to-date commercial virus detection software to detect and remove any viruses from any software prior to delivering it to the State.

(c) Calendar Warranty

The Contractor represents and warrants that all software for which the Contractor either sells or licenses to the State of Michigan and used by the State prior to, during or after the calendar year 2000, includes or shall include, at no added cost to the State, design and performance so the State shall not experience software abnormality and/or the generation of incorrect results from the software, due to date oriented processing, in the operation of the business of the State of Michigan.

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

(d) Third-party Software Warranty

The Contractor represents and warrants that it will disclose the use or incorporation of any third-party software into the Deliverables. At the time of Delivery, the Contractor shall provide in writing the name and use of any Third-party Software, including information regarding the Contractor's authorization to include and utilize such software. The notice shall include a copy of any ownership agreement or license that authorizes the Contractor to use the Third-party Software.

2.173 Equipment Warranty

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

The Contractor represents and warrants that the equipment/system(s) shall be in good operating condition and shall operate and perform to the requirements and other standards of performance contained in this Contract, when installed, at the time of Final Acceptance by the State, and for a period of 3 years commencing upon the first day following Final Acceptance.

Within 10 business days of notification from the State, the Contractor shall adjust, repair or replace all equipment that is defective or not performing in compliance with the Contract. The Contractor shall assume all costs for replacing parts or units and their installation including transportation and delivery fees, if any.

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

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

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

**2.174 Physical Media Warranty**

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

2.175 Standard Warranties

(a) Warranty of Merchantability

Deliverables shall be merchantable. All Deliverables shall be of good quality within the description given by the State, shall be fit for their ordinary purpose, shall be adequately contained and packaged within the description given by the State, shall conform to the agreed upon specifications, and shall conform to the affirmations of fact made by the Contractor on the container or label.

(b) Warranty of fitness for a particular purpose

When Contractor has reason to know or knows any particular purpose for which the Deliverables are required, and when the State is relying on the Contractor's skill or judgment to select or furnish suitable Deliverables, the Contractor warrants that the Deliverables are fit for such purpose.

(c) Warranty of title

Contractor shall convey good title in those Deliverables, whose transfer is right and lawful. All Deliverables provided by Contractor shall be delivered free from any security interest, lien, or encumbrance. Deliverables shall be delivered free of any rightful claim of any third person of ownership, interest, lien or encumbrance.

2.176 Consequences For Breach

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

2.180 Insurance

2.181 Liability Insurance

(a) Liability Insurance

The Contractor is required to provide proof of the minimum levels of insurance coverage as indicated below. The purpose of this coverage shall be to protect the State from claims which may arise out of or result from the Contractor's performance of services under the terms of this Contract, whether such services are performed by the Contractor, or by any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

The Contractor waives all rights against the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents for recovery of damages to the extent these damages are covered by the insurance policies the Contractor is required to maintain pursuant to this Contract.

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

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



The insurers selected by Contractor shall have an A.M. Best rating of A or better, or as otherwise approved in writing by the State, or if such ratings are no longer available, with a comparable rating from a recognized insurance rating agency. All policies of insurance required in this Contract shall be issued by companies that have been approved to do business in the State.

See http://www.mi.gov/cis/0,1607,7-154-10555_22535---.00.html.

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

Before the Contract is signed by both parties or before the purchase order is issued by the State, the Contractor must furnish to the Director of Purchasing Operations, certificate(s) of insurance verifying insurance coverage ("Certificates"). The Certificate must be on the standard "accord" form or equivalent. **THE CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING.** All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) shall contain a provision indicating that coverages afforded under the policies WILL NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED without THIRTY (30) days prior written notice, except for ten (10) days for non-payment of premium, having been given to the Director of Purchasing Operations, Department of Management and Budget. The notice must include the Contract or Purchase Order number affected and be mailed to: Director, Purchasing Operations, Department of Management and Budget, P.O. Box 30026, Lansing, Michigan 48909. Failure to provide evidence of coverage, may, at the State's sole option, result in this Contract's termination.

The Contractor is required to pay for and provide the type and amount of insurance checked below:

1. Commercial General Liability with the following minimum coverage:

\$2,000,000 General Aggregate Limit other than Products/Completed Operations

\$2,000,000 Products/Completed Operations Aggregate Limit

\$1,000,000 Personal & Advertising Injury Limit

\$1,000,000 Each Occurrence Limit

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

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

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

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

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

Any certificates of insurance received must also provide a list of states where the coverage is applicable.

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



4. Employers liability insurance with the following minimum limits:

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

- (b) Subcontractors

Except where the State has approved in writing a Contractor subcontract with other insurance provisions, Contractor shall require all of its Subcontractors under this Contract to purchase and maintain the insurance coverage as described in this Section for the Contractor in connection with the performance of work by those Subcontractors. Alternatively, Contractor may include any Subcontractors under Contractor's insurance on the coverage required in this Section. Subcontractor(s) shall fully comply with the insurance coverage required in this Section. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

- (c) Certificates of Insurance and Other Requirements

Contractor shall furnish to the Office of Purchasing Operations certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor shall provide evidence that the State and its agents, officers and employees are listed as additional insureds under each commercial general liability and commercial automobile liability policy. In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

Contractor shall maintain all required insurance coverage throughout the term of the Contract and any extensions thereto and, in the case of claims-made Commercial General Liability policies, shall secure tail coverage for at least three (3) years following the expiration or termination for any reason of this Contract. The minimum limits of coverage specified above are not intended, and shall not be construed, to limit any liability or indemnity of Contractor under this Contract to any indemnified party or other persons. Contractor shall be responsible for all deductibles with regard to such insurance. If Contractor fails to pay any premium for required insurance as specified in this Contract, or if any insurer cancels or significantly reduces any required insurance as specified in this Contract without the State's written consent, at the State's election (but without any obligation to do so) after the State has given Contractor at least thirty (30) days written notice, the State may pay such premium or procure similar insurance coverage from another company or companies; and at the State's election, the State may deduct the entire cost (or part thereof) from any payment due Contractor, or Contractor shall pay the entire cost (or any part thereof) upon demand by the State.

2.190 Indemnification

2.191 Indemnification

- (a) General Indemnification

To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties), accruing or resulting to any person, firm or corporation that may be injured or damaged by the Contractor in the performance of this Contract and that are attributable to the negligence or tortious acts of the Contractor or any of its subcontractors, or by anyone else for whose acts any of them may be liable.

- (b) Code Indemnification

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



(c) Employee Indemnification

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

(d) Patent/Copyright Infringement Indemnification

To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against the State to the extent that such action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or the operation of such equipment, software, commodity or service, or the use or reproduction of any documentation provided with such equipment, software, commodity or service infringes any United States patent, copyright, trademark or trade secret of any person or entity, which is enforceable under the laws of the United States.

In addition, should the equipment, software, commodity, or service, or its operation, become or in the State's or Contractor's opinion be likely to become the subject of a claim of infringement, the Contractor shall at the Contractor's sole expense (i) procure for the State the right to continue using the equipment, software, commodity or service or, if such option is not reasonably available to the Contractor, (ii) replace or modify to the State's satisfaction the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if such option is not reasonably available to Contractor, (iii) accept its return by the State with appropriate credits to the State against the Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

Notwithstanding the foregoing, the Contractor shall have no obligation to indemnify or defend the State for, or to pay any costs, damages or attorneys' fees related to, any claim based upon (i) equipment developed based on written specifications of the State; or (ii) use of the equipment in a configuration other than implemented or approved in writing by the Contractor, including, but not limited to, any modification of the equipment by the State; or (iii) the combination, operation, or use of the equipment with equipment or software not supplied by the Contractor under this Contract.

2.192 Continuation of Indemnification Obligations

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

2.193 Indemnification Procedures

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

- (a) After receipt by the State of notice of the action or proceeding involving a claim in respect of which it will seek indemnification, the State shall promptly notify Contractor of such claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to notify Contractor shall relieve Contractor of its indemnification obligations except to the extent that Contractor can demonstrate damages attributable to such failure. Within ten (10) days following receipt of written notice from the State relating to any claim, Contractor shall notify the State in writing whether Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying Contractor of a claim and prior to the State receiving Contractor's Notice of Election, the State shall be entitled to defend against the claim, at Contractor's expense, and Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during such period.



- (b) If Contractor delivers a Notice of Election relating to any claim: (i) the State shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in the handling of such claim and to monitor and advise the State about the status and progress of the defense; (ii) Contractor shall, at the request of the State, demonstrate to the reasonable satisfaction of the State, Contractor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) Contractor shall periodically advise the State about the status and progress of the defense and shall obtain the prior written approval of the State before entering into any settlement of such claim or ceasing to defend against such claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State shall have the right, at its own expense, to control the defense of that portion of such claim involving the principles of Michigan governmental or public law. Notwithstanding the foregoing, the State may retain control of the defense and settlement of a claim by written notice to Contractor given within ten (10) days after the State's receipt of Contractor's information requested by the State pursuant to clause (ii) of this paragraph if the State determines that Contractor has failed to demonstrate to the reasonable satisfaction of the State Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State of Michigan, or any of its subdivisions pursuant to this Section, must be coordinated with the Department of Attorney General.

In the event the insurer's attorney represents the State pursuant to this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

- (c) If Contractor does not deliver a Notice of Election relating to any claim of which it is notified by the State as provided above, the State shall have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of Contractor. If it is determined that the claim was one against which Contractor was required to indemnify the State, upon request of the State, Contractor shall promptly reimburse the State for all such reasonable costs and expenses.

2.200 Limits of Liability and Excusable Failure

2.201 Limits of Liability

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

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

2.202 Excusable Failure

Neither party will be liable for any default, damage or delay in the performance of its obligations under the Contract to the extent such default, damage or delay is caused by government regulations or requirements (executive, legislative, judicial, military or otherwise), power failure, electrical surges or current fluctuations, lightning, earthquake, war, water or other forces of nature or acts of God, delays or failures of transportation, equipment shortages, suppliers' failures, or acts or omissions of common carriers, fire; riots, civil disorders; strikes or other labor disputes, embargoes; injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of such party; provided the non-performing party and its Subcontractors are without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans.



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

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

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

2.203 Disaster Recovery

Contractor and the State recognize that the State provides essential services in times of natural or man-made disasters. Therefore, except as so mandated by Federal disaster response requirements, Contractor personnel dedicated to providing Services/Deliverables under this Contract will provide the State with priority service for repair and work around in the event of a natural or manmade disaster.

2.210 Termination/Cancellation by the State

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

2.211 Termination for Cause

- (a) In the event that Contractor breaches any of its material duties or obligations under this Contract (including a Chronic Failure to meet any particular SLA as defined in **Section 2.076**), which are either not capable of or subject to being cured, or are not cured within the time period specified in the written notice of breach provided by the State (such time period not to be less than thirty (30) days), or pose a serious and imminent threat to the health and safety of any person, or the imminent loss, damage or destruction of any real or tangible personal property, the State may, having provided written notice of termination to Contractor, terminate this Contract in whole or in part, for cause, as of the date specified in the notice of termination.
- (b) In the event that this Contract is terminated for cause, in addition to any legal remedies otherwise available to the State by law or equity, Contractor shall be responsible for all costs incurred by the State in terminating this Contract, including but not limited to, State administrative costs, reasonable attorneys' fees and court costs, and any reasonable additional costs the State may incur to procure the Services/Deliverables required by this Contract from other sources. Re-procurement costs shall not be considered by the parties to be consequential, indirect or incidental damages, and shall not be excluded by any other terms otherwise included in this Contract, provided such costs are not in excess of fifty percent (50%) more than the prices for such Service/Deliverables provided under this Contract.
- (c) In the event the State chooses to partially terminate this Contract for cause, charges payable under this Contract will be equitably adjusted to reflect those Services/Deliverables that are terminated and the State shall pay for all Services/Deliverables for which Final Acceptance has been granted provided up to the termination date. Services



and related provisions of this Contract that are terminated for cause shall cease on the effective date of the termination.

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

2.212 Termination for Convenience

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

**2.213 Non-Appropriation**

- (a) Contractor acknowledges that, if this Contract extends for several fiscal years, continuation of this Contract is subject to appropriation or availability of funds for this Contract. If funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available, the State shall have the right to terminate this Contract and all affected Statements of Work, in whole or in part, at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Contractor. The State shall give Contractor at least thirty (30) days advance written notice of termination for non-appropriation or unavailability (or such time as is available if the State receives notice of the final decision less than thirty (30) days before the funding cutoff).
- (b) If funding for the Contract is reduced by law, or funds to pay Contractor for the agreed-to level of the Services or production of Deliverables to be provided by Contractor are not appropriated or otherwise made available, the State may, upon thirty (30) days written notice to Contractor, reduce the level of the Services or the change the production of Deliverables in such manner and for such periods of time as the State may elect. The charges payable under this Contract will be equitably adjusted to reflect any equipment, services or commodities not provided by reason of such reduction.
- (c) In the event the State terminates this Contract, eliminates certain Deliverables, or reduces the level of Services to be provided by Contractor pursuant to this Section, the State shall pay Contractor for all Work-in-Process performed through the effective date of the termination or reduction in level, as the case may be and as determined by the State, to the extent funds are available. For the avoidance of doubt, this Section will not preclude Contractor from reducing or stopping Services/Deliverables and/or raising against the State in a court of competent jurisdiction, any claim for a shortfall in payment for Services performed or Deliverables finally accepted before the effective date of termination.

2.214 Criminal Conviction

The State may terminate this Contract immediately and without further liability or penalty in the event Contractor, an officer of Contractor, or an owner of a 25% or greater share of Contractor is convicted of a criminal offense incident to the application for, or performance of, a State, public or private Contract or subcontract; convicted of a criminal offense, including any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for State of Michigan employees; convicted under State or federal antitrust statutes; or convicted of any other criminal offense which in the sole discretion of the State reflects upon Contractor's business integrity.

2.215 Approvals Rescinded

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

2.216 Rights and Obligations Upon Termination

- a. Contractor shall be providing to the State Contractor's proprietary, copyrighted, trade secret test material titled *Testing of Adult Basic Education 9 & 10 (TABE)* in both paper-and-pencil format (TABE testing materials) and software (TABE Software) for installation on PCs. The Contractor shall grant to the State a non-exclusive right and license to use the TABE testing materials and TABE Software as furnished under the Contract in the State's Department of Corrections system during the term of the Contract and any renewals or extensions of the Contract, solely for the purposes of the Contract. Such license shall not be perpetual and shall only continue during the term of the Contract and any renewals or extensions thereof. The TABE Software shall be provided to the State during the Term of the Contract (including any renewals or extensions) under the terms and conditions of the Subscriber License, a sample of which is attached hereto and made a part hereof. Subscriber License fees are stated in the price of this Contract. No other rights are granted by the Contractor with respect to the TABE testing materials or TABE Software.



The State understands that the TABE testing materials and TABE Software contain assessment tests which have been validated and verified by CTB and any modifications could invalidate the test results. Therefore, no permission is given to modify any of the TABE testing materials or TABE Software. Furthermore, no permission is given to copy (except for backup purposes of the TABE Software) or reproduce any of the TABE testing materials or TABE Software or to sublicense any use thereof to a third party or to transfer the TABE Software to another entity of the State outside of the Department of Corrections. The State shall not reverse engineer, decompile, or otherwise tamper with the TABE Software.

Nor shall the State or its agents take any actions that may impair or otherwise interfere with the intellectual property rights or security of Contractor. Upon termination of the Contract for any reason, all TABE Software will be promptly returned to the Contractor, except that the physical copies of the tests and test materials received and paid for by the State may be retained by the State.

In the event that Contractor shall, for any reason, cease to conduct business or cease to support the TABE Software, Contractor agrees to negotiate in good faith a mutually agreeable license for usage and fees.

2.217 Reservation of Rights

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

2.218 Contractor Transition Responsibilities

In the event this contract is terminated, for convenience or cause, dissolved, voided, rescinded, nullified, expires or is otherwise rendered unenforceable, the Contractor agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. In the event of termination or the expiration of this Contract, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed ninety (90) days. These efforts shall include, but are not limited to, the following:

- (a) Personnel - The Contractor shall work with the State, or a specified third party, to develop a transition plan setting forth the specific tasks and schedule to be accomplished by the parties, to effect an orderly transition. The Contractor shall allow as many personnel as practicable to remain on the job to help the State, or a specified third party, maintain the continuity and consistency of the services required by this Contract. In addition, during or following the transition period, in the event the State requires the Services of the Contractor's subcontractors or vendors, as necessary to meet its needs, Contractor agrees to reasonably, and with good-faith, work with the State to use the Services of Contractor's subcontractors or vendors. Contractor will notify all of Contractor's subcontractors of procedures to be followed during transition.
- (b) Information - The Contractor agrees to provide reasonable detailed specifications for all Services/Deliverables needed by the State, or specified third party, to properly provide the Services/Deliverables required under this Contract. The Contractor will provide the State with asset management data generated from the inception of this Contract through the date on which this Contractor is terminated in a comma-delineated format unless otherwise requested by the State. The Contractor will deliver to the State any remaining owed reports and documentation still in Contractor's possession subject to appropriate payment by the State.
- (c) Software. - The Contractor shall reasonably assist the State in the acquisition of any Contractor software required to perform the Services/use the Deliverables under this Contract. This shall include any documentation being used by the Contractor to perform the Services under this Contract. If the State transfers any software licenses to the Contractor, those licenses shall, upon expiration of the Contract, transfer back to the State at their current revision level. Upon notification by the State, Contractor may be required to freeze all non-critical changes to Deliverables/Services.
- (d) Payment - If the transition results from a termination for any reason, reimbursement shall be governed by the termination provisions of this Contract. If the transition results from expiration, the Contractor will be reimbursed for all reasonable transition costs (i.e. costs incurred within the agreed period after contract expiration that result from transition operations) at the rates specified by **Exhibit D**. The Contractor will prepare an accurate accounting from which the State and Contractor may reconcile all outstanding accounts.

**2.219 State Transition Responsibilities**

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

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

2.220 Termination by Contractor**2.221 Termination by Contractor**

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

2.230 Stop Work**2.231 Stop Work Orders**

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

2.232 Cancellation or Expiration of Stop Work Order

If a stop work order issued under this **Section 2.230** is canceled or the period of the stop work order or any extension thereof expires, Contractor shall resume work. The parties shall agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if: (a) the stop work order results in an increase in the time required for, or in Contractor's costs properly allocable to, the performance of any part of the Contract; and (b) Contractor asserts its right to an equitable adjustment within thirty (30) calendar days after the end of the period of work stoppage; provided that, if the State decides the facts justify the action, the State may receive and act upon a Contractor proposal submitted at any time before final payment under the Contract. Any adjustment will conform to the requirements of **Section 2.106**.

2.233 Allowance of Contractor Costs

If the stop work order is not canceled and the work covered by the stop work order is terminated for reasons other than material breach, such termination shall be deemed to be a termination for convenience under **Section 2.212**, and the State shall allow reasonable costs resulting from the stop work order in arriving at the termination settlement. For the avoidance of doubt, the State shall not be liable to Contractor for loss of profits because of a stop work order issued under this **Section 2.230**.

2.240 Reserved**2.250 Dispute Resolution**

**2.251 In General**

Any claim, counterclaim, or dispute between the State and Contractor arising out of or relating to the Contract or any Statement of Work shall be resolved as follows. For all Contractor claims seeking an increase in the amounts payable to Contractor under the Contract, or the time for Contractor's performance, Contractor shall submit a letter executed by Contractor's Contract Administrator or his designee certifying that (a) the claim is made in good faith, (b) the amount claimed accurately reflects the adjustments in the amounts payable to Contractor or the time for Contractor's performance for which Contractor believes the State is liable and covers all costs of every type to which Contractor is entitled from the occurrence of the claimed event, and (c) the supporting data provided with such an affidavit are current and complete to Contractor's best knowledge and belief.

**2.252 Informal Dispute Resolution**

- (a) All operational disputes between the parties shall be resolved under the Contract Management procedures developed pursuant to **Section 2.100**. If the parties are unable to resolve any disputes after compliance with such processes, the parties shall meet with the Director of Purchasing Operations, DMB, or designee, for the purpose of attempting to resolve such dispute without the need for formal legal proceedings, as follows:
- (i) The representatives of Contractor and the State shall meet as often as the parties reasonably deem necessary in order to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.
 - (ii) During the course of negotiations, all reasonable requests made by one party to another for non-privileged information reasonably related to the Contract will be honored in order that each of the parties may be fully advised of the other's position.
 - (iii) The specific format for the discussions will be left to the discretion of the designated State and Contractor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.
 - (iv) Following the completion of this process within sixty (60) calendar days, the Director of Purchasing Operations, DMB, or designee, shall issue a written opinion regarding the issue(s) in dispute within thirty (30) calendar days. The opinion regarding the dispute shall be considered the State's final action and the exhaustion of administrative remedies.
- (b) This **Section 2.250** will not be construed to prevent either party from instituting, and a party is authorized to institute, formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or pursuant to **Section 2.253**.
- (c) The State will not mediate disputes between the Contractor and any other entity, except state agencies, concerning responsibility for performance of work pursuant to the Contract.

2.253 Injunctive Relief

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

2.254 Continued Performance

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

2.260 Federal and State Contract Requirements**2.261 Nondiscrimination**

In the performance of the Contract, Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, physical or mental disability. Contractor further agrees that every subcontract entered into for the performance of this Contract or any purchase order resulting from this Contract will contain a provision requiring non-discrimination in employment, as specified here, binding upon each Subcontractor. This covenant is required pursuant to the Elliot Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, and any breach of this provision may be regarded as a material breach of the Contract.

**2.262 Unfair Labor Practices**

Pursuant to 1980 PA 278, MCL 423.231, *et seq.*, the State shall not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled pursuant to section 2 of the Act. This information is compiled by the United States National Labor Relations Board. A Contractor of the State, in relation to the Contract, shall not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Pursuant to section 4 of 1980 PA 278, MCL 423.324, the State may void any Contract if, subsequent to award of the Contract, the name of Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of Contractor appears in the register.

2.263 Workplace Safety and Discriminatory Harassment

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

2.270 Litigation**2.271 Disclosure of Litigation**

- (a) Disclosure. Contractor must disclose any material criminal litigation, investigations or proceedings involving the Contractor (and each Subcontractor) or any of its officers or directors or any litigation, investigations or proceedings under the Sarbanes-Oxley Act. In addition, each Contractor (and each Subcontractor) must notify the State of any material civil litigation, arbitration or proceeding which arises during the term of the Contract and extensions thereto, to which Contractor (or, to the extent Contractor is aware, any Subcontractor hereunder) is a party, and which involves: (i) disputes that might reasonably be expected to adversely affect the viability or financial stability of Contractor or any Subcontractor hereunder; or (ii) a claim or written allegation of fraud against Contractor or, to the extent Contractor is aware, any Subcontractor hereunder by a governmental or public entity arising out of their business dealings with governmental or public entities. Any such litigation, investigation, arbitration or other proceeding (collectively, "Proceeding") must be disclosed in a written statement to the Contract Administrator within thirty (30) days of its occurrence. Details of settlements which are prevented from disclosure by the terms of the settlement may be annotated as such. Information provided to the State from Contractor's publicly filed documents referencing its material litigation will be deemed to satisfy the requirements of this Section.
- (b) Assurances. In the event that any such Proceeding disclosed to the State pursuant to this Section, or of which the State otherwise becomes aware, during the term of this Contract would cause a reasonable party to be concerned about:
- (i) the ability of Contractor (or a Subcontractor hereunder) to continue to perform this Contract in accordance with its terms and conditions, or
 - (ii) whether Contractor (or a Subcontractor hereunder) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in such Proceeding, which conduct would constitute a breach of this Contract or a violation of Michigan law, regulations or public policy, then Contractor shall be required to provide the State all reasonable assurances requested by the State to demonstrate that:
 - (A) Contractor and/or its Subcontractors hereunder will be able to continue to perform this Contract and any Statements of Work in accordance with its terms and conditions, and
 - (B) Contractor and/or its Subcontractors hereunder have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in such Proceeding.
 - (C) Contractor shall make the following notifications in writing:



- (1) Within thirty (30) days of Contractor becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor shall notify the Office of Purchasing Operations.
- (2) Contractor shall also notify the Office of Purchasing Operations within thirty (30) days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.
- (3) Contractor shall also notify Purchasing Operations within thirty (30) days whenever changes to company affiliations occur.

2.272 Governing Law

The Contract shall in all respects be governed by, and construed in accordance with, the substantive laws of the State of Michigan without regard to any Michigan choice of law rules that would apply the substantive law of any other jurisdiction to the extent not inconsistent with, or pre-empted by federal law.

2.273 Compliance with Laws

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

2.274 Jurisdiction

Any dispute arising from the Contract shall be resolved in the State of Michigan. With respect to any claim between the parties, Contractor consents to venue in Ingham County, Michigan, and irrevocably waives any objections it may have to such jurisdiction on the grounds of lack of personal jurisdiction of such court or the laying of venue of such court or on the basis of forum non conveniens or otherwise. Contractor agrees to appoint agents in the State of Michigan to receive service of process.

2.280 Environmental Provision

2.281 Environmental Provision

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

- (a) The Contractor shall use, handle, store, dispose of, process, transport and transfer any material considered a Hazardous Material in accordance with all federal, State and local laws. The State shall provide a safe and suitable environment for performance of Contractor's Work. Prior to the commencement of Work, the State shall advise Contractor of the presence at the work site of any Hazardous Material to the extent that the State is aware of such Hazardous Material. If the Contractor encounters material reasonably believed to be a Hazardous Material and which may present a substantial danger, the Contractor shall immediately stop all affected Work, give written notice to the State of the conditions encountered, and take appropriate health and safety precautions.
- (b) Upon receipt of a written notice, the State will investigate the conditions. If (a) the material is a Hazardous Material that may present a substantial danger, and (b) the Hazardous Material was not brought to the site by the Contractor, or does not result in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Materials, the State shall order a suspension of Work in writing. The State shall proceed to have the Hazardous Material removed or rendered harmless. In the alternative, the State shall terminate the affected Work for the State's convenience.



- (c) Once the Hazardous Material has been removed or rendered harmless by the State, the affected Work shall be resumed as directed in writing by the State. Any determination by the Michigan Department of Community Health and/or the Michigan Department of Environmental Quality (whichever is applicable) that the Hazardous Material has either been removed or rendered harmless shall be binding upon the State and Contractor for the purposes of resuming the Work. If any such incident with Hazardous Material results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in **Section 2.076** for a time as mutually agreed by the parties.
- (d) If the Hazardous Material was brought to the site by the Contractor, or results in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor shall bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material in accordance with Applicable Laws to the condition approved by applicable regulatory agency(ies). If the Contractor fails to take appropriate action pursuant to Applicable Laws and consistent with the State requirements, then the State may take appropriate action.

2.290 *General*

2.291 Amendments

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

2.292 Assignment

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

2.293 Entire Contract; Order of Precedence

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

2.294 Headings

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

**2.295 Relationship of the Parties (Independent Contractor Relationship)**

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

2.296 Notices

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

State: **Douglas Collier**
State of Michigan
Office of Purchasing Operations
PO Box 30026
530 West Allegan
Lansing, Michigan 48909

With a copy to:

Department of Corrections
Attn.: **Julie L. DeRose**
206 E. Michigan Avenue
P.O. Box 30003
Lansing, MI 48909

Department of Information Technology
Attn: **Shelley Warstler**
525 West Allegan
Lansing, MI 48913

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

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

2.297 Media Releases and Contract Distribution

- (a) **Media Releases**
Neither Contractor nor the State will make any news releases, public announcements or public disclosures, nor will they have any conversations with representatives of the news media, pertaining to the Contract, the Services or the Contract without the prior written approval of the other party, and then only in accordance with explicit written instructions provided by that party. In addition, neither Contractor nor the State will use the name, trademarks or other proprietary identifying symbol of the other party or its affiliates without such party's prior written consent. Prior written consent of the Contractor must be obtained from authorized representatives.
- (b) **Contract Distribution**
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.

2.298 Reformation and Severability

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

**2.299 Consents and Approvals**

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

2.300 No Waiver of Default

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

2.301 Survival

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

2.302 Covenant of Good Faith

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

2.303 Permits

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

2.304 Website Incorporation

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

2.305 Taxes

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

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

2.306 Prevailing Wage

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



The term Contractor shall include all general contractors, prime contractors, project managers, trade contractors, and all of their contractors or subcontractors and persons in privity of contract with them.

The Contractor, its subcontractors, their subcontractors, and all persons involved with the performance of this contract in privity of contract with the Contractor shall keep posted on the work site, in a conspicuous place, a copy of all wage rates and fringe benefits as prescribed in the contract. You must also post, in a conspicuous place, the address and telephone number of the Michigan Department of Labor and Economic Development, the office responsible for enforcement of the wage rates and fringe benefits.

You shall keep an accurate record showing the name and occupation of the actual wage and benefits paid to each individual employed in connection with this contract. This record shall be available to the State upon request for reasonable inspection.

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

2.307 Call Center Disclosure (Reserved)

2.308 Future Bidding Preclusion

Contractor acknowledges that, to the extent this Contract involves the creation, research, investigation or generation of a future RFP, it may be precluded from bidding on the subsequent RFP. The State reserves the right to disqualify any bidder if the State determines that the bidder has used its position (whether as an incumbent Contractor, or as a Contractor hired to assist with the RFP development, or as a Vendor offering free assistance) to gain a leading edge on the competitive 8.

2.310 Reserved

2.320 Extended Purchasing

2.321 MiDEAL

Public Act 431 of 1984 permits DMB to provide purchasing services to any city, village, county, township, school district, intermediate school district, non-profit hospital, institution of higher education, community, or junior college.

A current listing of approved program members is available at: <http://www.michigan.gov/doingbusiness/0,1607,7-146-6586-16656--,00.html>. Unless otherwise stated, it is the responsibility of the Contractor to ensure that the non-state agency is an authorized purchaser before extending the Contract pricing.

The Contractor will supply Contract Services and equipment at the established State of Michigan contract prices and terms to the extent applicable and where available. Inasmuch as these are non-state agencies, all invoices will be submitted to and payment remitted by the local unit of government on a direct and individual basis. To the extent that authorized local units of government purchase quantities of Services and/or equipment under this Contract, the quantities of Services and/or equipment purchased will be included in determining the appropriate rate wherever tiered pricing based on quantity is provided.

**2.322 State Employee Purchases (Reserved)**2.330 Federal Grant Requirements**2.331 Federal Grant Requirements**

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

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

http://straylight.law.cornell.edu/uscode/html/uscode31/usc_sec_31_00001352----000-.html

http://www.archives.gov/federal_register/codification/executive_order/12549.html

http://www.archives.gov/federal_register/executive_orders/pdf/12869.pdf

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



CTB/ McGRAW-HILL LLC
READ BEFORE USING
SOFTWARE LICENSE AGREEMENT

You should carefully read the following terms and conditions before opening this Package. Opening this package indicates your acceptance of these terms and conditions. RETURN OF SOFTWARE FOR FULL CREDIT WILL ONLY BE ACCEPTED IF THE PACKAGE IS RETURNED TO CTB/MCGRAW-HILL (CTB) WITHIN THIRTY (30) DAYS OF THE ORIGINAL SHIPMENT.

1. GRANT OF LICENSE.

Subject to all the terms and conditions hereof, CTB/ McGraw-Hill LLC, a subsidiary of The McGraw-Hill Companies, Inc., 20 Ryan Ranch Road, Monterey, California 93940-5703 (“CTB”) hereby grants to Licensee, upon payment in full of the published license fee, or other license fee agreed in writing (the “License Fee”), a non-transferable, non exclusive license to use the Licensed Software solely in Licensee’s own business, school or school district, or library for a term commencing on the date of payment in full of License Fee and continuing in perpetuity unless terminated in accordance with the terms hereof. Licensee shall not use the Licensed Software outside the one single location (street address), nor shall it use the Licensed Software to process information for any third party.

2. PROPRIETARY RIGHTS.

Licensee hereby acknowledges that the Licensed Software is the property of CTB or its suppliers and that the Licensed Software, including all algorithms contained therein, is proprietary to CTB or its suppliers. Licensee shall not sell, decompile, reverse-engineer, disassemble, transfer, disclose, display or otherwise make available any Licensed Software or copies or portions thereof to any other person or entity. Licensee agrees to secure and protect the Licensed Software so as to maintain the proprietary rights of CTB therein, including appropriate instructions to and agreement with its employees.

3. COPIES.

Licensee shall be permitted to make one and only one permanent copy of the Licensed Software solely for Licensee’s own use as a back-up copy. Other than temporarily copying the Licensed Software into the memory of a computer in connection with the actual use of the Licensed Software, and the permanent copy referred to above, Licensee shall not make or permit to be made any copies of the Licensed Software. The use of the Licensed Software shall be restricted to processing the data of one school (for school versions of the Licensed Software) or school district (for district versions of the Licensed Software).

4. DOCUMENTATION.

The documentation supplied with the Licensed Software is the copyrighted property of CTB. Licensee shall not under any circumstances divulge or permit to be divulged such documentation to any other person or entity. Licensee shall make no copies of the documentation.



5. OBJECT CODE

Licensee understands and acknowledges that the Licensed Software consists of object code only and that CTB shall not supply source code versions of the Licensed Software. Licensee shall not create or attempt to create, by decompilation, reverse engineering, disassembly, or otherwise, the source code for the Licensed Software, or any part thereof.

6. LIMITED WARRANTY.

CTB warrants that the Licensed Software will conform to its published specifications for thirty (30) days after the Licensed Software has been shipped to Licensee. THE WARRANTY STATED ABOVE IS A LIMITED WARRANTY AND IT IS THE ONLY WARRANTY MADE BY CTB. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY EXCLUDED BY CTB AND WAIVED BY LICENSEE. Other than the limited warranty Stated above, the entire risk as to the quality and performance of the Licensed Software is with Licensee. CTB does not warrant that the Licensed Software will meet Licensee's requirements or that the operation of the Licensed Software will be uninterrupted or error free.

7. LIMITATION OF REMEDIES.

CTB's entire liability and Licensee's exclusive remedy shall be either the replacement of any diskette not meeting the limited warranty set forth above and which is returned to CTB with a copy of Licensee's paid invoice; or if CTB is unable to deliver a replacement diskette which is free of defects Licensee may terminate this Software License Agreement (the Agreement) by returning the Licensed Software and thereupon a credit shall be issued on account for the License Fee.

In no event shall CTB be liable for any damages, including any lost profits, or other incidental or consequential damages arising out of the use or performance of the Licensed Software, even if CTB has been advised of the possibility of such damages. In no event shall CTB be liable to Licensee for any reason in an amount in excess of the total License Fee paid by Licensee to CTB.

8. SOFTWARE SUPPORT.

Software support service shall be provided as specified in the Customer Support and Software Enhancement Agreement also enclosed in this package. Licensee acknowledges and agrees that CTB may, in its discretion, and without any liability to Licensee, withdraw support for certain prior versions or releases of the Licensed Software or portions or modules thereof, or may introduce new releases or versions of the Licensed Software that are not functionally compatible with some or all previous releases or versions of the Licensed Software. CTB will make available such new releases or versions of the Licensed Software to Licensee on the same terms and conditions as are extended to other licensees licensing such new releases and versions under similar commercial circumstances. CTB shall have no obligation to support Licensee's prior releases and versions of the Licensed Software if Licensee falls to license such new releases and versions.

9. TERMINATION.

Upon the breach of or noncompliance with any term or provision of this Agreement, CTB shall have the right to terminate the license granted hereby by written notice to Licensee. Upon such termination Licensee shall immediately turn over to CTB all copies of the Licensed Software and any documentation supplied in connection therewith. Such remedy shall be in addition to and cumulative to any other remedies CTB may have at law or in equity with respect to such breach or noncompliance.

10. AUTHORITY.

No employee of CTB shall have any authority to modify or supplement any of the terms hereof in any manner whatsoever.



11. U.S. GOVERNMENT RIGHTS.

This software is 'Commercial Computer Software' which was developed at private expense with no government funding. If the Licensed Software is acquired by the U.S. Government (or any agency thereof), the rights and license granted by this Software License Agreement shall be as Stated in this Software License Agreement or as Stated in a Purchase Order or Contract accepted by both the US. Government and CTB, but in no event shall the U.S. Government acquire greater rights in the Licensed Software than the U.S. Government Restricted Rights specified below, unless so Stated in said Purchase Order or a Contract between the parties.

U.S. GOVERNMENT RESTRICTED RIGHTS NOTICE

The software and accompanying written material are provided to the U.S. Government with Restricted Rights. Use, duplication, or disclosure of the software by the Government is subject to restrictions as set forth In subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at 48 C.F.R. §252.227-7013 or in subparagraph (c)(2) of the Commercial Computer Software—Restricted Rights clause at 48 C.F.R. §52.227-19, as applicable. The Contractor/licensor is CTB/McGraw-Hill.

12. GENERAL

This Agreement is the complete and exclusive Statement of the understanding of the parties hereto with respect to the transaction contemplated hereby and supersedes any and all prior proposals, understandings and agreements.

This Agreement may not be modified or altered except by a written instrument signed by Licensee and executed by an authorized signatory of CTB. This Agreement and performance hereunder shall be governed by the laws of the State of New York. The failure of CTB to exercise in any respect any right provided for herein shall not be deemed a waiver of such right or any further right hereunder. No action, regardless of form, arising in connection with this Agreement may be brought by Licensee more than two (2) years after the date such cause of action shall have arisen. CTB shall have the right to collect from Licensee any expenses incurred, including attorney's fees, in enforcing its rights under this Agreement

CTB/McGraw-Hill LLC, a subsidiary of The McGraw-Hill Companies, Inc.

LICENSEE HEREBY AFFIRMS THAT IT HAS READ AND UNDERSTANDS AND WILL COMPLY WITH ALL THE TERMS OF THE FOREGOING AGREEMENT.



**CTB/ McGRAW-HILL LLC
CUSTOMER SUPPORT AND
SOFTWARE ENHANCEMENT AGREEMENT**

1. SOFTWARE ENHANCEMENT

During the term of this Agreement, provided CTB/ McGraw-Hill LLC, a subsidiary of The McGraw-Hill Companies, Inc. (CTB), 20 Ryan Ranch Road, Monterey, California 93940-5703, is in receipt of current customer support and software enhancement fee ("Fee"), CTB shall take reasonable measures to replace defective Licensed Software or to remedy any programming error which is attributed to CTB and which significantly affects the use of the Licensed Software. Such correction or replacement shall be promptly accomplished after Licensee has identified the problem and notified CTB In writing. In addition, CTB shall provide Licensee with new releases of the Licensed Software which may be made available by CTB from time to time on the same terms as are extended to licensees who license such new releases under similar circumstances. New products are not considered part of new releases.

2. CUSTOMER SUPPORT HOTLINE

During the term of this Agreement, CTB shall maintain a telephone customer support hotline (the Hotline) during regular CTB hours. Provided that CTB is in receipt of the Fee, Licensee shall be entitled to telephone the Hotline with questions or problems with respect to the most recent release of the Licensed Programs.

3. CUSTOMER RESPONSIBILITY

Licensee agrees to install fixes and new releases as soon as they are received. Under no circumstances is Licensee permitted to modify the Licensed Software in any way; any such modification violates the Software License Agreement and voids this Agreement. Licensee agrees to provide CTB with proof, as requested, and with sufficient support and test time on Licensee's computer system to duplicate a reported problem, certify that the problem is with the Licensed Programs, and certify that the problem has been corrected.

4. TERM

This Agreement shall commence on the date the Licensed Software is shipped by CTB and shall continue for periods of one (1) year on payment of the annual Fee by Licensee. This Agreement may be terminated by either party giving ninety (90) days written notice to the other party.

5. PRICE AND PAYMENT

Licensee shall pay to CTB the annual Fee designated by CTB. The Fee shall be due and payable upon the first day of the month in which the anniversary of CTB's shipment of the Licensed Software to Licensee occurs. If Licensee fails to pay CTB within thirty (30) days of the anniversary date. CTB shall be entitled to cease providing customer support and software enhancement services to Licensee.

6. EXPENSES

Licensee shall reimburse CTB for any out-of-pocket expenses incurred at Licensee's request, including travel to and from Licensee's site, lodging, meals, telephone and shipping, as may be necessary in connection with the duties performed under this Agreement by CTB.

7. ADJUSTMENTS TO PRICES

CTB may at any time change its Fees, terms and conditions as set forth in this Agreement.



8. TITLE OF SOFTWARE SYSTEMS AND CONFIDENTIALITY

Any corrections, additions and modifications to the Licensed Software In the form of new or partial programs or documentation which may be provided under this Agreement shall remain proprietary to CTB. The CTB Software License Agreement shall include, under its proprietary restrictions, any such additional programming and documentation provided under this Agreement. The Licensed Software and all programs developed hereunder and all copies thereof are proprietary to CTB and title thereto remains in CTB. All applicable right to patents, copyrights, trademarks and trade secrets in the Licensed Software or any modifications made at Licensee's request, are and shall remain in CTB. Licensee shall not sell, transfer, publish, disclose, display or otherwise make available the Licensed Software or copies thereof to others. Licensee agrees to secure and protect each module, software product, documentation and copies thereof in a manner consistent with the maintenance of CTB rights therein and to take appropriate action by instruction or agreement with its employees and consultants who are permitted access to each program or software product to satisfy its obligations hereunder. All copies of the Licensed Software made by Licensee, including transactions, compilations, partial copies with modifications and updates, are the property of CTB. Violation of any provision of this "Title to Software Systems and Confidentiality" section shall be the basis for immediate termination of this Agreement.

9. NEW PRODUCTS NOT COVERED

It is agreed that no new software product shall be provided or serviced under this Agreement. No new software product shall be furnished to Licensee as a new release or modification to the Licensed Software. CTB shall, in its sole discretion, determine whether software shall constitute a new product or a new release or modification.

10. EXCLUSION OF LIABILITY

CTB MAKES AND LICENSEE RECEIVES NO WARRANTY, EXPRESS OR IMPLIED, AND THERE ARE EXPRESSLY EXCLUDED ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CTB SHALL HAVE NO LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT FOR CONSEQUENTIAL, EXEMPLARY OR INCIDENTAL DAMAGES, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL CTB'S LIABILITY FOR ANY CLAIM EXCEED THE ANNUAL FEE PAID HEREUNDER.

11. TERMINATION

In the event that CTB terminates this Agreement, Licensee shall receive a refund of its annual Fee prorated to correspond to the unexpired portion of the term of this Agreement. In the event of termination by either party, CTB's obligations under this Agreement shall immediately cease. CTB may terminate this Agreement in the event of default by Licensee.

12. TAXES

Licensee shall, in addition to the other amounts payable under this Agreement, pay all sales and other taxes, however designated, which are levied or imposed by reason of the transaction contemplated by this Agreement. Without limiting the foregoing, Licensee shall promptly pay to CTB an amount equal to any such items actually paid or required to be collected or paid by CTB.

13. GENERAL

- (a) Each party acknowledges that it has read this Agreement, understands it and agrees to be bound by its terms, and further agrees that it is the complete and exclusive Statement of the agreement between the parties, which supersedes and merges all prior proposals, understandings and all other agreements, oral and written, between the parties relating to this Agreement. This Agreement may not be modified or altered except by written instrument duly executed by both parties.
- (b) Dates or times by which CTB is required to perform under this Agreement shall be postponed automatically to the extent that CTB is prevented from meeting them by causes beyond its reasonable control.



- (c) This Agreement and performance hereunder shall be governed by the laws of the State of New York, USA.
- (d) No action, regardless of form, arising out of this Agreement may be brought by Licensee more than two (2) years after the cause of action has arisen.
- (e) If any provision of this Agreement is invalid under any applicable statute or rule of law, it is to that extent to be deemed omitted.
- (f) Licensee may not assign or sublicense without the prior written consent of CTB, its rights, duties or obligations under this Agreement to any person or entity, in whole or in part. CTB may assign this Agreement to any affiliated or subsidiary entity.
- (g) CTB shall have the right to collect from Licensee its reasonable expenses incurred in enforcing this Agreement, including attorney's fees.
- (h) The waiver or failure of CTB to exercise in any respect any right provided for herein shall not be deemed a waiver of any further right hereunder.
- (i) Written notice by either party to the other shall be deemed to have been given when mailed, certified or registered mail, return receipt requested, to the intended recipient thereof at Its address below or set forth in its Purchase Order, or to such other address as such intended recipient may specify in a notice pursuant hereto.

**CTB/McGraw-Hill LLC, a subsidiary of The McGraw-Hill Companies, Inc.
LICENSEE HEREBY AFFIRMS THAT IT HAS READ AND UNDERSTANDS AND WILL
COMPLY WITH ALL THE TERMS OF THE FOREGOING AGREEMENT.**