

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

April 21, 2011

CHANGE NOTICE NO. 4
TO
CONTRACT NO. 071B6200381
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR		TELEPHONE (517) 485-4477	
Public Policy Associates, Inc. 119 Pere Marquette Drive Lansing, MI 48912-1231 Paddejn@PublicPolicy.com		Jeff Padden	
		BUYER/CA (517) 241-3768	
Contract Compliance Inspector: Linda Brown		Lance Kingsbury	
Consultant for Supplemental Educational Services Evaluation – Department of Education			
CONTRACT PERIOD:		From: August 1, 2006	To: October 31, 2011
TERMS	N/A	SHIPMENT	N/A
F.O.B.	N/A	SHIPPED FROM	N/A
MINIMUM DELIVERY REQUIREMENTS		N/A	

NATURE OF CHANGE(S):

Effective immediately, this Contract is hereby EXTENDED through October 31, 2011. All other terms, conditions, specifications, and pricing remain unchanged.

AUTHORITY/REASON:

Per request of the Michigan Department of Education, Ad Board approval dated 04/21/11, and DTMB/Purchasing Operations' approval.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$565,792.00

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

August 19, 2009

**CHANGE NOTICE NO. 3
 TO
 CONTRACT NO. 071B6200381
 between
 THE STATE OF MICHIGAN
 and**

NAME & ADDRESS OF VENDOR		TELEPHONE (517) 485-4477
Public Policy Associates, Inc. 119 Pere Marquette Drive Lansing, MI 48912-1231 Paddenj@PublicPolicy.com		Jeff Padden
		BUYER/CA (517) 241-3768 Lance Kingsbury
Contract Compliance Inspector: Linda Brown		
Consultant for Supplemental Educational Services Evaluation – Department of Education		
CONTRACT PERIOD: From: August 1, 2006		To: July 31, 2011
TERMS	N/A	SHIPMENT
		N/A
F.O.B.	N/A	SHIPPED FROM
		N/A
MINIMUM DELIVERY REQUIREMENTS		
N/A		

NATURE OF CHANGE(S):

Effective immediately, this Contract is hereby **EXTENDED** through July 31, 2011, and **INCREASED** by \$238,438.00. All other terms, conditions, specifications, and pricing remain unchanged.

AUTHORITY/REASON:

Per request of the Michigan Department of Education, Ad Board approval dated 08/18/09, and DMB/Purchasing Operations' approval.

TOTAL REVISED ESTIMATED CONTRACT VALUE: \$565,792.00

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. 2
TO
CONTRACT NO. 071B6200381
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR Public Policy Associates, Inc. 119 Pere Marquette Drive Lansing, MI 48912-1231	TELEPHONE (517) 485-4477 Jeff Padden
	BUYER/CA (517) 241-3768 Lance Kingsbury
Contract Compliance Inspector: Linda Brown Consultant for Supplemental Educational Services Evaluation – Department of Education	
CONTRACT PERIOD: From: August 1, 2006 To: July 31, 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 Malynda Little (517) 373-8622. All other terms, conditions, specifications, and pricing remain unchanged.

AUTHORITY/REASON:

Per DMB/Purchasing Operations.

CURRENT AUTHORIZED SPEND LIMIT REMAINS: \$327,354.00

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

November 7, 2007

CHANGE NOTICE NO. 1
TO
CONTRACT NO. 071B6200381
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR Public Policy Associates, Inc. 119 Pere Marquette Drive Lansing, MI 48912-1231	TELEPHONE (517) 485-4477 Jeff Padden
	BUYER/CA (517) 373-8530 Rebecca Nevai
	Contract Compliance Inspector: Linda Brown Consultant for Supplemental Educational Services Evaluation – Department of Education
CONTRACT PERIOD: From: August 1, 2006 To: July 31, 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, \$218,236.00 is added to this Contract. All other terms, conditions, specifications, and pricing remain unchanged.

AUTHORITY/REASON:

Per request of the Michigan Department of Education and Ad Board approval dated November 6, 2007.

TOTAL REVISED ESTIMATED CONTRACT VALUE: \$327,354.00

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

August 14, 2006

**NOTICE
 TO
 CONTRACT NO. 071B6200381
 between
 THE STATE OF MICHIGAN
 and**

NAME & ADDRESS OF VENDOR Public Policy Associates, Inc. 119 Pere Marquette Drive Lansing, MI 48912-1231		TELEPHONE (517) 485-4477 Jeff Padden
		BUYER/CA (517) 241-1647 Irene Pena, CPPB
Contract Compliance Inspector: Linda Brown Consultant for Supplemental Educational Services Evaluation – Department of Education		
CONTRACT PERIOD: From: August 1, 2006 To: July 31, 2009		
TERMS N/A	SHIPMENT N/A	
F.O.B. N/A	SHIPPED FROM N/A	
MINIMUM DELIVERY REQUIREMENTS N/A		

The terms and conditions of this Contract are those of ITB #071I6200082, this Contract Agreement and the vendor's quote dated 01/31/2006. 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: \$109,118.00

**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. 071B6200381
 between
 THE STATE OF MICHIGAN
 and**

NAME & ADDRESS OF VENDOR <p style="text-align: center;">Public Policy Associates, Inc. 119 Pere Marquette Drive Lansing, MI 48912-1231</p>	TELEPHONE (517) 485-4477 Jeff Padden BUYER/CA (517) 241-1647 Irene Pena, CPPB
Contract Compliance Inspector: Linda Brown Consultant for Supplemental Educational Services Evaluation – Department of Education	
CONTRACT PERIOD: From: August 1, 2006 To: July 31, 2009	
TERMS <p style="text-align: center;">N/A</p>	SHIPMENT <p style="text-align: center;">N/A</p>
F.O.B. <p style="text-align: center;">N/A</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	
MISCELLANEOUS INFORMATION: The terms and conditions of this Contract are those of ITB #071I6200082, this Contract Agreement and the vendor's quote dated 01/31/2006. 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: \$109,118.00	

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the ITB No. 071I6200082. Orders for delivery may be issued directly by the Department of Education through the issuance of a Purchase Order Form.

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

<p>FOR THE VENDOR:</p> <p style="text-align: center;">Public Policy Associates, Inc. _____ Firm Name</p> <p style="text-align: center;">_____ Authorized Agent Signature</p> <p style="text-align: center;">_____ Authorized Agent (Print or Type)</p> <p style="text-align: center;">_____ Date</p>	<p>FOR THE STATE:</p> <p style="text-align: center;">_____ Signature Irene Pena, CPPB, Buyer Specialist _____ Name Services Division, Purchasing Operations _____ Title</p> <p style="text-align: center;">_____ Date</p>
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ATTENTION:

~~INSTRUCTIONS FOR PREPARATION OF A REQUEST FOR PROPOSAL (RFP)~~

~~DO NOT RENUMBER THIS DOCUMENT. IF A SECTION OR EXHIBIT DOES NOT APPLY, REMOVE THE TEXT AND INSERT THE WORD "RESERVED" FOR THAT PARTICULAR SECTION. If there is a choice between several provisions, delete all of those that do not apply.~~

~~Sections marked in green must be filled in initially by the requestor. Sections in blue font, must also be addressed by the requestor, sometimes independently, and many times in conjunction with the DMB OAS Buyer (see check list matrix and associated responsibility key). The entire document will be reviewed and approved by the assigned buyer, and DMB OAS management (based on buyer signature authority) before being posted on the website for bidders.~~

~~Sections marked in yellow are instructions that must be deleted from the final contract.~~

~~The attached Request for Proposal (RFP) format has been prepared for use by State agencies when the services of consultants are required. The format is written in a "fill-in-the-blank" style and is hopefully self-explanatory. However, please feel free to direct questions concerning the format to the Office of Acquisitions, Department of Management and Budget, at (517) 373-6327. The RFP format consists of the following four sections:~~

~~Section I, Work Statement. This section is a detailed description of the services or study to be contracted for, including the background and objectives of the work. It is the most important portion of the RFP. Generally, the more precise, accurate, and complete this part of the RFP is, the greater will be the probability of receiving proposals that meet agency needs. An essential feature of article I is the segmentation of the work into specific tasks if the nature of the study warrants such a breakdown. Content of this section is the responsibility of the requesting agency.~~

~~Section II, Contractual Terms and Conditions. This section describes the contractual terms and conditions of the RFP that will be a part of any Purchase Order (P.O.)/Contract that results from the RFP. Content of this Section is the responsibility of the Office of Acquisition Services, but does include areas requiring agency input.~~

~~Section III, Certifications and Representations. This section asks potential Contractor(s) to certify and assure the State of certain requirements regarding their firm and or their ability to perform the work described within the RFP. Content of this Section is the responsibility of the Office of Acquisition Services.~~

~~Section IV, Bidding Information. This section is used to inform bidders of the general procurement conditions under which the RFP is issued. Included are informational items concerning a general statement of the services or study to be contracted for, time constraints, rights reserved to the State, response date, pre-proposal conferences, oral presentations, news releases, and contractual information. Content of this section is a joint responsibility of the Office of Acquisition Services and the requesting agency. Also included within this section is Information Required From Bidders, this section provides bidders with instructions regarding the format and nature of the detailed information that must be provided in a proposal. Content of this section is a joint responsibility of the Office of Acquisition Services and the requesting agency.~~

~~These four articles contain language and/or format for the RFP. All of the language used has been carefully chosen for applicability to State business. Much of the language, especially in Section II, has been prepared in cooperation with the Attorney General's office, and is not to be modified by State agencies without consultation with the Office of Acquisition Services. Should a Blanket Purchase Order (Contract) result from the RFP, its format and language will consist of sections I and II of the RFP and the winning vendor's proposal. The RFP and all appendices and attachments are to be prepared by the requesting agency in MS Word. Electronic copies of RFPs are to be submitted via e-mail or diskette.~~

~~Please remove this cover page of instructions before releasing.~~

Article 1 – Statement of Work (SOW)

~~Upon completion of the RFP process, this SOW should be written to reflect the agreement of the State and the selected Vendor on the items covered.~~

1.0 Project Identification

1.001 PROJECT REQUEST



The purpose of this Contract is to establish a provision of Title 1 of the Contract for Supplemental Educational Services, as reauthorized by the No Child Left Behind Act. Through SES, students from low-income families are eligible to receive additional academic assistance if they attend a Title 1 school that has not made adequate yearly progress (AYP) for at least 3 years (i.e., a school that is at least in its second year of “school improvement” status). ~~This Section is typically one paragraph in length and provides an overview of the project. Agency to identify in one or two sentences, the overall project description, or type of Deliverables/Services requested. You may use the following fill-in-the-blank sentence or you may write your own. The purpose of this RFP is to obtain bids for _____ necessary to complete _____ project.~~

1.002 BACKGROUND

Under the No Child Left Behind (NCLB) Act of 2001, low-income children in Title I schools that have been identified as needing improvement are entitled to receive supplemental education services (SES) for free. SES provides tutoring services to low-income students who attend Title I schools that fail to make adequate yearly progress (AYP) as defined by the state for at least three years, are in corrective action, or are in restructuring status. In most states, the task of establishing the infrastructure to accommodate SES has proven difficult. As the Michigan Department of Education (MDE) moves forward in its efforts to increase the academic achievement of low-income students, an evaluation of the current processes in place to offer SES and the performance of SES providers is appropriate.

Michigan currently has 378 schools in 108 local education agencies that have been identified as needing improvement, corrective action, or restructuring. In Michigan, over 10,000 students enrolled in SES during the 2004–2005 school year. Currently, there are approximately 150 State-approved SES providers in Michigan. As these numbers continue to grow, Michigan must be able to develop an appropriate infrastructure to not only meet the requirements of NCLB, but to ensure that low-income students in schools failing to make AYP have the services necessary to improve their academic achievement.

To achieve this, states across the country are currently in the process of improving procedures to comply with the Public Schools Choice and SES provisions of NCLB. However, they face several challenges in implementing a successful SES program, including:

- Reaching out to families to increase the number of children benefiting from SES
- Offering clear and complete information to help families compare and choose a provider
- Encouraging more local groups to become SES providers, especially in rural areas
- Coordinating timing and communication among states, districts, providers, and families
- Developing systems to monitor the quality and effectiveness of provider services

MDE wants to ensure that districts send school choice and SES parental notifications in a timely manner including all required information, that parents receive the necessary information required by NCLB, and that SES providers are improving the academic performance of students.

To achieve these goals, MDE seeks an external evaluator to survey district and school staff, survey parents of SES students, and conduct a within-school matched treatment-control group time-series analysis based on MEAP tests in grades 3–8 in English/Language Arts and Mathematics.

~~This section is typically less than a page long and describes how the State got here from there. Note any concurrent projects and if this project is part of a larger project. Also explain critical success factors and the business objectives that have caused this SOW to be issued. Agencies must provide bidders with any background information necessary to provide a complete and responsive bid, i.e., systems and/or programs impacted by this request, federal rulings, public acts impacting the project, requirements, etc.~~

~~or~~

~~For performance-based RFP: Agency must describe performance result they need to achieve, and any known parameters under which the work must be completed. Vendor must be asked to describe their understanding of the required performance results, and their capability for adequately addressing the known parameters (state/federal rulings, standards, etc.)~~



of

For professional services RFP: Agency must identify any known background leading up to the needed requirements, i.e., changes in programs, state/federal law, new initiatives, etc.

1.1 Scope of Work and Deliverables

1.101 IN SCOPE

- a. The Contractor will carry out this project under the direction and control of the Michigan Department of Education.
- b. Although there will be continuous liaison with the Contractor team, the client agency's project director will meet monthly as a minimum, with the Contractor's project manager for the purpose of reviewing progress and providing necessary guidance to the Contractor in solving problems that arise.



- c. The Contractor will submit brief written monthly summaries of progress which outline the work accomplished during the reporting period; work to be accomplished during the subsequent reporting period; problems, real or anticipated, which should be brought to the attention of the client agency's project director; and notification of any significant deviation from previously agreed-upon work plans. A copy of this report will be forwarded to the named buyer in Acquisition Services.
- d. Within five (5) working days of the award of the Contract, the Contractor will submit to the Michigan Department of Education, Linda Brown project director for final approval a work plan, which must include the following: Product: 1. interim report – consisting of analysis of 2005-06 survey data and student SES participation and MEAP achievement data. 2. Final report – consisting of an introduction, a brief methodical section, sections of findings relative to each SES provider, a recommendation section and appropriate appendices (including a more extensive description of the methodologies used, surveys and protocols, and brief individual reports on each SES provider. 3. Executive summary for the final report of 10 pages or fewer. The following is technical approach to be used by Public Policy Associates (PPA):

PPA is fully committed to completing all work and deliverables according to the timeline contained in the Contract. The following task list outlines the technical approach that PPA envisions for the evaluation.

Task 1: Finalize evaluation design and survey content

PPA will submit to the project director within the Michigan Department of Education a final work plan for approval within five (5) working days of the award. The work plan will build on this proposal, but will include any changes necessary after consulting with the project director and any other parties to be included in developing the evaluation design. PPA will work closely with MDE throughout the duration of the project to ensure that the evaluation is responsive to the needs of MDE.

The initial task for the project will include developing a more thorough evaluation design. The evaluation plan will be presented to the client in accordance with the timeline outline in the ITB. PPA will conduct a literature review to ground the evaluation within the context of evidence-based practices, which will serve to guide the evaluation design and survey content.

The evaluation plan will also contain a detailed explanation of the methodologies to be used, a draft of the consent letter to schools, and copies of the survey instruments to be employed. Initial drafts of the survey instruments will be provided to MDE for feedback prior to the submission of the final evaluation design.

Task 2: Obtain approval to participate from appropriate school districts

After approval of the evaluation plan, schools will be mailed a consent letter to participate in the evaluation. The letter should come from MDE to increase the likelihood that schools will respond quickly. Return envelopes will be addressed to PPA. PPA will send follow-up letters and/or conduct phone calls to schools that fail to respond within a reasonable time frame. The consent letters should be mailed back by the schools approximately a month after they are mailed. At this time, surveys will be mailed to those schools that have consented to participate.

Further efforts to secure consent from additional schools will include follow-up letters and phone calls if necessary. A second round of surveys will be mailed out approximately two months after consent letters are mailed.

Task 3: Survey Data Collection

Staff Survey

PPA will send mail or Email surveys (based on the availability of e-mail addresses) to district and school staff for schools that have been identified as needing improvement, corrective action, or restructuring to determine the current efforts of districts and schools to provide SES. Possible topics include:



- Understanding of required information under NCLB (e.g., content of notifications, regulations)
- Current procedures used in notifying parents of SES
- Current logistical problems in complying with SES standards
- Perceived effectiveness of SES in improving student academic achievement

Staff surveys will include mostly close-ended items, but can include a small number of open-ended questions to provide more in-depth responses. Mail surveys will be sent to each school with a letter from the Michigan Department of Education explaining the purpose. Surveys will be returned directly to PPA, compiled into an electronic database, and results will be analyzed.

PPA will also request a copy of SES notifications from each school to which a survey is mailed. An analysis of each letter will be conducted to ensure that it complies with all federal and state guidelines. Those failing to comply with federal and state guidelines will be forwarded to MDE for possible corrective action.

Demographic information for each school will be gathered in the survey, including grade levels served, student population, location (including rural vs. urban), public school vs. public school academy, and Title 1 funding. Additional information desired by MDE will be included as well. The survey analysis will include descriptive information about the demographic characteristics of the schools and will also include statistical analysis to determine if any significant differences exist based on the demographic variables. For instance, results will show whether size of the school impacts the level to which schools find it easy or difficult to comply with SES guidelines.

Parent Survey

A second set of surveys will be sent out to parents who should have been sent SES notification letters. A random sample of parents will be drawn from the total population with a number high enough to yield a sampling error of $\pm 3\%$ or less. A rough estimate would likely place the sample at approximately 1,000 total participants.

The parent survey will assess whether parents received notifications from schools informing them that their children were eligible for SES services (and school choice if MDE desires). The number of parents reporting that they received notifications will be skewed by several factors, including failure to remember, a spouse or other caregiver handling the mail, etc. However, the number will provide an initial baseline with which to compare the follow-up survey data in the 2006–07 school year. This will allow the evaluation to assess the effectiveness of any additional measures taken by MDE or individual districts to improve the parental notification process.

The parent survey will also contain items that focus on the choices made by parents as to whether or not to send their children to SES or not and the reasons for those choices. The survey will also measure parents' perceptions of the effectiveness of SES providers. Additional items will be included after consulting with MDE.

Task 4: Analysis of student SES participation and MEAP achievement data

Analysis of MEAP Data

For academic achievement, a treatment-control group using pre- and post-tests is most appropriate as indicated in the Contract. PPA will match each student participating in SES with a similar control student at the same school with comparable 2005–06 MEAP scores. In some instances, smaller schools with few students may pose a methodological problem in matching SES students to comparable control group students. PPA will work closely with MDE to choose the best course of action in such cases. With over 10,000 students currently enrolled in SES, an automated process will be developed to best match students. An initial attempt will be made to match students with a control counterpart that has the same scale scores. From there the search will expand in 5 point increments until a match is identified. In instances where multiple choices are present, other factors including ethnicity, gender, and limited English proficiency will be used to select participants. However, MEAP scores should be the primary factor in selecting control group participants.



A pre-test and post-test format will be used to reveal the degree to which students receiving SES improved from the first year to the second and the degree to which students receiving SES differ from those students in the control group. Statistical analyses will involve two steps. First, regression techniques will be used to determine the degree to which SES impacts MEAP scores while controlling for other variables gathered from the MEAP examination. These other variables include ethnicity, gender, limited English proficiency, and economic disadvantages. Although all students receiving SES should meet the standard of economic disadvantages, this standard may not be enforced appropriately in each district.

The second step will include an analysis for each SES provider. Data collected from the State's Web-based data collection system will be used to identify from which SES provider students received training. MEAP scores will be used to determine the effectiveness of each SES provider in improving the academic achievement of students. For each provider, the total difference between the 2005–2006 and 2006–2007 MEAP scores for students receiving services from that SES provider will be reported along with the statistical significance of the difference.

The Contractor's project organizational structure.

1. The Contractor's staffing table with names and title of personnel assigned to the project. This must be in agreement with staffing of accepted proposal. Necessary substitutions due to change of employment status and other unforeseen circumstances may only be made with prior approval of the State.
 - a. The project breakdown showing sub-projects, activities and tasks, and resources required and allocated to each.
 - b. The time-phased plan in the form of a graphic display, showing each event, task, and decision point in your work plan.

Reports

Deliverables

PPA is committed to meeting all timelines for deliverables listed in this Contract.

Complete evaluation design, including content of surveys

Notify and secure approval to participate from appropriate school districts

Complete collection of 2005–2006 survey data

Complete analysis of 2005–2006 student SES participation and MEAP achievement data

Issue interim report based on 2005–2006 data

Complete collection of 2006–2007 student SES participation and MEAP achievement data

Issue final evaluation report

An expanded task list and timeline will be included in the evaluation plan and will be developed in cooperation with MDE upon execution of this Contract.

Vendor will bill quarterly, but no more than half of the amount will be due by the completion of the Interim Report. The total remainder will be due upon completion of the final evaluation report.

For academic achievement, the model to be used shall reflect the school matched treatment-control group with pretest and post-test format based on MEAP tests in grades 3-8 in English/Language Arts and Mathematics. In this evaluation design, each student who receives SES will be matched to a similar control student at the same school.

~~List or describe what is "in scope." Be as detailed as possible as more specificity will help prevent scope creep. Identify any phases of the project and specific systems, applications, and/or locations that are involved. Attempt to identify the boundaries of the project. Avoid using phrases that begin with "assist" or "participate" because those words do not explain what the Contractor is going to actually do. If there are multiple parties involved, then define scope by owner. Agency to identify known boundaries of the RFP, this could be as detailed as listing the number of required resources and total hours, or as general as completion of Phase I development for a Statewide system within a specified period of time, or~~



~~providing an anti-smoking advertising campaign using public service unpaid advertising avenues only over a 2-yr period.~~

~~Or~~

~~For performance based RFP: Agency to identify work to be accomplished in a general, outcome-based sense. Vendor must be asked to identify boundaries of the work proposed to achieve the required outcomes.~~

~~Or~~

~~For professional services RFP: Agency to identify levels of service required and tasks to be accomplished. Vendors must be asked to provide a detailed explanation of the types and levels of service proposed within their response.~~

1.102 OUT OF SCOPE - RESERVED

~~List or describe what is "out of scope." This should not say that anything not listed above is out of scope. Out of scope items can always be brought back in scope with a change order, but this will set the field of responsibility for the start of the SOW. Agency and OAS Buyer must identify products and services outside the scope of this specific RFP or Contract document. EX: Storage would be outside the scope of a contract for web hosting and replacing light bulbs might be outside the scope of a janitorial services contract, even though in both cases the same vendor is most likely capable of providing both.~~

~~Or~~

~~For performance based RFP: Agency should identify and ask Vendor to confirm any products and services which they consider outside the scope of the RFP.~~

~~Or~~

~~For professional services RFP: Agency should identify and ask Vendor to confirm any products and services which they consider outside the scope of the RFP.~~

1.103 ENVIRONMENT - RESERVED

~~For IT RFP: Describe the technical environment. What are the hardware and software requirements? Is there a development, production and testing environment? Any of these that are not known should be listed as Deliverables that the Vendor must provide. Agency to describe their technical environment, listing any equipment/systems that purchased items must be compatible with, or interface with. For professional IT services, agency must specify any systems they currently have which the service provider must be familiar with, or have within their areas of expertise.~~

~~Or~~

~~For a performance based RFP: Vendors must be asked to describe their capabilities working within the described current technical environment to achieve the required outcomes, and propose any additional technologies or related services necessary.~~

~~Or~~

~~For a Service RFP: Agency must describe the environment and external factors that may affect the services or the environment in which the Vendor will be working (i.e. The janitorial service involves cleaning a Correctional facility).~~

~~Or~~

~~For a Deliverables RFP: Agency must describe the environment in which the agency is expecting the Deliverable to work (i.e. The chairs are being bought for a carpeted floor as opposed to a hard surface floor).~~

1.104 WORK AND DELIVERABLE



Vendor will oversee the project, contribute to the evaluation design process, prepare and edit the Interim and final reports and monitor the timeline and report any problems to MDE.

MDE will contribute to the design process, give final approval to the design and secure approval to participate in the evaluation from the appropriate school districts and inform them of their responsibilities as participants, assist the vendor's staff in securing the necessary data, including student SES participation and MEAP data, ensure school districts' participation in the process and review the final evaluation report.

~~Describe in detail what work Contractor will perform. Identify all tasks, work elements and objectives of the SOW, and timeline for completion of the major elements of the project. For each activity, list of describe the Deliverables associated with that activity. Each Deliverable must have acceptance criteria and process for review. If acceptance criteria are not available at the time the SOW is entered into, then there should be a Deliverable of acceptance criteria to the State BEFORE delivery of the Deliverable itself.~~

~~Agency must describe specific Deliverables required. If Agency does not have one, Vendor must be asked to provide a detailed work plan, identifying how it will accomplish the necessary work and provide the required Deliverables/Services. Vendor must be asked to include in its proposal a break down, by deliverable, task, resource and number of hours, if available. If necessary, Vendor should be asked to provide a Gantt type plan, including time periods and specifics where multiple tasks are performed concurrently. For projects including IT products, vendor must be asked to identify hardware, software, and associated Services required and included for each task and Deliverable.~~

~~Or~~

~~For performance based RFP: Agency to identify Deliverable outcomes expected. Vendor must be asked to describe in detail, including both Deliverables and Services listings, how they will accomplish each task necessary to provide required Deliverable/Service.~~

~~Or~~

~~For professional services RFP: Agency to identify type and expected quality of services to be performed, if task breakdown is known, this should also be provided. If not known, then the Vendor should be asked to provide a task breakdown.~~

~~1.2 Roles and Responsibilities~~**1.201 CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES**

The contractor staff, assigned to this Michigan Department of Education project, shall be those that best meet the MDOE needs. The MDOE reserves the right to approve the contractor's assignment of key personnel to this project and to recommend reassignment of personnel deemed unsatisfactory by the MDOE. The contractor shall discuss the key personnel assigned to this project.

~~Agency should identify any required Key Personnel. Vendor must be asked to identify Contractor staff who will be involved, identify by name individuals that are to be designated as Key Personnel (if necessary), and describe in detail their roles and responsibilities. Vendor should be asked to identify where Contractor staff will be physically located during Contract performance. If an overall organization chart has been developed, then provide a reference to that chart as well. Agency should ask Vendor to identify any part-time personnel. Descriptions of roles should be functional and not just by title. It is ok to duplicate roles that are listed in other sections of the SOW. Agency should ask for names of individuals where appropriate.~~

~~Or~~

~~For performance based RFP: Agency to identify proposed Key Personnel by function and Vendor must be asked to identify roles and responsible personnel critical to its proposal.~~

~~Or~~

~~For professional services RFP: Agency to identify proposed Key Personnel by function and Vendor must be asked to identify roles and responsible personnel critical to its proposal.~~

~~For large or complex projects, an organization chart, including Key Personnel, can be included as Article 1, Attachment B.~~

1.202 STATE STAFF, ROLES, AND RESPONSIBILITIES – RESERVED

~~Identify State staff who will be involved and describe in detail their roles and responsibilities. If an overall organization chart has been developed, then provide a reference to that chart as well. Note any part-time personnel. Descriptions of roles should be functional and not just by title. It is ok to duplicate roles that are listed in other sections of the SOW. Agency should specify State personnel dedicated to project, and identify their associated roles and responsibilities.~~

1.203 OTHER ROLES AND RESPONSIBILITIES – RESERVED

Table 1 shows the staffing capabilities of the proposed PPA project team. Biographical information for each of the project staff appears in the staffing section of this proposal.



Table 1: Staff Capabilities

Staff Member, Role in Project	Education Policy	Test Assessment	Educational Evaluation Methods	Data Management	Survey Design	Advanced Statistical Analysis	Reporting
Nancy C. Hewat, Ph.D., Project Director	♦	♦	♦	♦	♦	♦	♦
Laurence S. Rosen, Ph.D., Senior Research Consultant	♦		♦	♦	♦	♦	♦
Douglas C. Drake, Senior Policy Consultant	♦		♦	♦	♦		♦
Lisa M. Marckini, Senior Research Consultant	♦	♦	♦	♦	♦	♦	♦
Ferzana Havewala, Research Consultant		♦	♦	♦	♦	♦	♦
William A. Edwards, Research Consultant	♦	♦	♦	♦	♦	♦	♦
Colleen Graber, Research Consultant	♦		♦	♦	♦		♦
Administrative Assistant and Editor				♦			♦



Project Plan

Nancy Hewat, Project Manager, will be responsible for the overall management of the evaluation. Three additional senior-level consultants will be intimately involved with the project, steering the evaluation design and methodologies employed. The senior-level consultants will work with three research consultants with significant experience in educational evaluation and advanced statistical methods. The time of the personnel involved will be allocated according to Table 2:

Staff	Task 1	Task 2	Task 3	Task 4	Total
N. Hewat	30	10	40	40	120
L. Rosen	5	5	20	10	40
D. Drake	5	5	10	5	25
L. Marckini	5	5	10	5	25
F. Havewala	10	20	70	70	170
W. Edwards	40	30	110	100	280
C. Graber	15	15	40	50	120
Admin/Editor	10	20	30	10	70
TOTAL	120	110	330	290	850

~~Identify "other" staff who will be involved and describe in detail their roles and responsibilities. This may include other State vendors, other projects, other State departments, etc. If an overall organization chart has been developed, then provide a reference to that chart as well. Note any part-time personnel. Descriptions of roles should be functional and not just by title. It is ok to duplicate roles that are listed in other sections of the SOW. Vendor should be asked to identify any "other" staff that will be involved in providing the Deliverables/Services to the State.~~

1.3 Project Plan

1.301 PROJECT PLAN MANAGEMENT

- a. The Contractor will carry out this project under the direction and control of the Michigan Department of Education.
- b. Although there will be continuous liaison with the Contractor team, the client agency's project director will meet monthly as a minimum, with the Contractor's project manager for the purpose of reviewing progress and providing necessary guidance to the Contractor in solving problems that arise.
- c. The Contractor will submit brief written monthly summaries of progress which outline the work accomplished during the reporting period; work to be accomplished during the subsequent reporting period; problems, real or anticipated, which should be brought to the attention of the client agency's project director; and notification of any significant deviation from previously agreed-upon work plans. A copy of this report will be forwarded to the named buyer in Acquisition Services.
- d. Within five (5) working days of the award of the Contract, the Contractor will submit to the Michigan Department of Education, Linda Brown project director for final approval a work plan, which must include the following: Product: 1. interim report – consisting of analysis of 2005-06 survey data and student SES participation and MEAP achievement data. 2. Final report – consisting of an introduction, a brief methodical section, sections of findings relative to each SES provider, a recommendation section and appropriate appendices (including a more extensive description of the methodologies used, surveys and protocols, and brief individual reports on each SES provider. 3. Executive summary for the final report of 10 pages or fewer.

The Contractor's project organizational structure.

1. The Contractor's staffing table with names and title of personnel assigned to the project. This must be in agreement with staffing of accepted proposal. Necessary substitutions due to change of employment status and other unforeseen circumstances may only be made with prior approval of the State.



- a. The project breakdown showing sub-projects, activities and tasks, and resources required and allocated to each.
- b. The time-phased plan in the form of a graphic display, showing each event, task, and decision point in your work plan.



~~Identify the project plan. Describe how the plan will be reviewed and updated on a regular basis. Agency should identify required project management process, including expected frequency and mechanisms for updates/progress reviews, and individuals responsible for receiving/reacting to the requested information. Vendor should be asked to identify and explain the reasons for any deviations from the project plan. If there is no project plan, then Vendor should be asked to propose a project plan for the project. Vendor should be asked to present project management plan, identifying methods, tools and processes proposed to oversee the project, address issues/changes as they may arise, and keep the appropriate parties apprised of progress.~~

1.302 REPORTS

The contractor shall respond to all project deadlines as established by the MDOE for services provided under this contract. Timely and responsive follow-up and execution are expected. Upon failure to meet a predetermined deadline, the contractor must provide an explanation for such a failure as soon as it is known, and submit an updated project schedule to the MDOE. The contractor will be required to provide the following:

PPA is committed to meeting all timelines for these deadlines as outlined in this Contract.

~~Identify what reports are necessary and the process for preparation and review of the reports. Define a meeting schedule for reviewing the project. Keep in mind a progress report could be as simple as a monthly or quarterly memo recapping activities of the prior period, or as complex as a detailed progress and issues log, tracked in Excel, or Access. Agency should identify the type and frequency of reports required for management and oversight of requested project. Vendor should be asked to identify and explain any deviations from the required reporting. Vendor should be asked to respond to agency-listed requirements, identifying standard reports available, and noting where customization is necessary. If there is not a clear set of reports for the project, then Vendor should be asked to propose a standard set of reports for managing the project as part of its bid response.~~

1.4 Project Management

1.401 ISSUE MANAGEMENT - RESERVED

~~Issues are those things that endanger the project. It includes imminent threats and events that may have already occurred. Identify how issues will be captured, reported and escalated. Agency should define the issue escalation process to include whether escalation will be based on age, severity, budget impact, etc. and where the escalation levels are. Vendor should be asked to identify and explain any deviations from the proposed issue management process. If there is not an issue management process, then Vendor should be asked to propose a standard issue management process for managing the project as part of its bid response. Vendor should be asked to identify the issue management process to be utilized for this project, including responsible parties, phone numbers, email addresses if relevant, and processes.~~

~~**1.402 RISK MANAGEMENT - RESERVED** Risk and Issues are not the same. Risks are those things that you can assume or anticipate in a project. Issues are imminent threats or things that have already occurred. Risk management generally involves (1) identification of the risk, (2) assigning a level of priority based on the probability of occurrence and impact to the project, (3) definition of mitigation strategies, and (4) monitoring of risk and mitigation strategy. Risk assessment review should be conducted on a regular basis. Vendor should be asked to identify and explain any deviations from the proposed risk management process. If there is not a risk management process, then Vendor should be asked to propose a standard risk management process for managing the project as part of its bid response. Vendor should be asked to identify the risk management process to be utilized for this project, including responsible parties, phone numbers, email addresses if relevant, and processes.~~

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, Acquisition Services Buyer, who will make recommendations to the Director of Acquisition Services regarding ultimate



approval/disapproval of change request. If the DMB Acquisition Services Director agrees with the proposed modification, and all required approvals are obtained (including State Administrative Board), the Acquisition Services Buyer will issue an addendum to the Contract, via a Contract Change Notice. **Vendors who provide products or services prior to the issuance of a Contract Change Notice by the DMB Office of Acquisition Services, risk non-payment for the out-of-scope/pricing products and/or services.**

The PPA team prides itself on its flexibility. We understand that conditions in the real world change, and that it is an important aspect of applied research to adapt as such changes occur. If the project changes—whether due to unforeseen funding contractions or expansions or other surprises—we will respond quickly and thoroughly to analyze the effect of the change on the evaluation. We will then collaborate with the MDE client team to revise the evaluation as necessary to continue to capture the maximum possible value for policy makers, program managers, and staff.

All changes that result from such a process will be documented in the periodic reports to the MDE client team.

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.

- 1) Prior to the start of the engagement the contractor will provide Board staff with a detailed “scope of work” document defining the key aspects of the engagement that the financial consultant will be required to complete. This document will include a cost estimate.
- 2) Monthly submission of the contractor’s time spent on the engagement and the general breakdown of activities, i.e., document review and analysis, participation in meetings, development of benchmarks, report writing, etc., performed during the month.
- 3) The contractor must meet all previously agreed upon deadlines for completion of various aspects of the engagement.
- 4) The contractor must respond, within a mutually agreed upon timeframe, to required changes in the scope of the engagement including modifications to required completion dates or deployment of resources.



- 5) The contractor must complete the engagement within the agreed upon timeframes and within the projected monetary budget.

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

~~Describe in detail acceptance criteria and service levels expected. There are often multiple sub-Deliverables that must be accepted before the project level Deliverable can be presented and approved. Deliverables must be presented to the appropriate person and accepted in writing. The basis of the State's ability to reject a Deliverable must relate to the written requirements of the SOW. Any rejection should be based on the acceptance criteria and the requirements of the SOW. For some Contracts, acceptance may be sign-off on time sheets. For other Contracts, acceptance may be a very rigorous testing and review process.~~

~~Agency must identify acceptance process for requested Deliverables and Services. If specific agency sign-offs are needed, identify the responsible position and review process. If a specific service level commitment is required, the agency should identify those requirements here.~~

~~Each Deliverable must have acceptance criteria and process for review (See Section 1.104). If acceptance criteria are not available at the time the SOW is entered into, then there should be a Deliverable of acceptance criteria to the State BEFORE delivery of the Deliverable itself. Vendor should be asked to provide acceptance criteria as part of its bid response where appropriate.~~

1.502 FINAL ACCEPTANCE

Final Acceptance is when the project is completed and functions according to the requirements. Any intermediate acceptance of Sub-Deliverables does not complete the requirement of Final Acceptance.

PPA agrees and complies with this statement.

~~Final Acceptance is when the project is completed and functions according to the requirements. Any intermediate acceptance of sub-Deliverables does not complete the requirement of Final Acceptance.~~

~~Or~~

~~For projects with both interim and final acceptance requirements, Agency should identify process for acceptance of Deliverables/Services. Where payment is tied to the acceptance of Deliverables, percentages associated with interim steps must be identified.~~

~~Or~~

~~For performance-based contracts and professional services RFP: Agency should state that Acceptance is tied to adequate performance of required Services and/or delivery of the Deliverables.~~

1.6 Compensation and Payment

1.601 COMPENSATION AND PAYMENT

All prices/rates quoted in this Contract cannot change for the duration of the Contract.

~~Vendor should be asked to list detail of compensation proposed, e.g., hourly rates, number of hours per task, unit prices, cost per task, cost per deliverable, etc. If the list is too long, the document may become an "Attachment" to the Statement of Work. If Contractor will be reimbursed for any other expenses, describe them and any cost limits in this section (i.e. travel will be reimbursed at the State's then current rates). Vendor should be asked to break down costs by acceptance of Deliverables, time periods, invoicing, labor vs. non-labor, etc. as appropriate to the subject of the SOW. Agency must state whether the RFP will result in a (1) firm, fixed price contract; (2) firm, fixed unit price contract; or (3) part lump-sum/part unit price contract. For RFP evaluation purposes, Agency may work with Buyer to include several detailed cost models and ask Vendor to respond accordingly. Remind Vendors to seal this section separately if required for evaluation purposes.~~



To be used for Contract:

State shall pay Contractor an amount not to exceed _____ dollars (\$____) [specify maximum dollar amount] for the performance of all activities necessary for or incidental to the performance of work as set forth in this SOW. Authorized Services and Price List as follows (use separate pages, marked as Article 1, Attachment A, if necessary for the price schedules relevant to each Statement of Work):

1.7 Additional Terms and Conditions Specific to this SOW

1.701 Additional Terms and Conditions Specific to this SOW - RESERVED

~~State should identify additional terms and conditions specific to this SOW not found in Contract, if any. Any additions should be reviewed for consistency with the term and conditions of the Contract. Vendor may be asked to provide any additional statements/comments/concerns it has about the information requested or anything that it believes should have been addressed, but was not. If Liquidated Damages are to be applied, Agency must quantify loss potential with failure to perform, and should reference the Liquidated Damages Clause in Article 2 here.~~

NON-STATE AGENCY REQUIREMENTS

~~Act Number 431 of the Public Acts of 1984 permits the State of Michigan, Department of Management and Budget, 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. The bidder is requested to complete the attached "Non-State Agency Statement" to indicate a willingness to supply commodities to these authorized local units of government, school districts, etc. as well as the state departments and agencies. Should a contract result, a listing of approved program members will be included.~~

~~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. Orders received from non-approved local units of government shall not be considered unless prior approval is granted by DMB Office of Acquisition Services.~~

~~Estimated requirements for authorized local units of government are not included in the quantities shown in this ITB.~~

NON-STATE AGENCY STATEMENT

~~Act Number 431 of the Public Acts of 1984 permits the State of Michigan, Department of Management and Budget, to provide purchasing services to — As a result of the enactment of this legislation, the MIDEAL Program has been developed. This program extends the use of state contracts to program members. The governmental agency must enter into an agreement with the State of Michigan to become authorized to participate, thus ensuring that local units of government secure a greater return for the expenditure of public funds. It is the policy of the Office of Acquisition Services, Department of Management and Budget, that the final approval to utilize any such contract in this manner must come from the contract vendor.~~

~~In such cases, contract vendors supply merchandise at the established State of Michigan contract prices and terms. Inasmuch as these are non-state agencies, all purchase orders will be submitted by, invoices will be billed to, and payment will be remitted by the authorized MIDEAL member on a direct and individual basis in accordance with contract terms.~~

~~Therefore, it is required that all bidders indicate, by checking the appropriate box below, whether they will (first box) or will not (second box) honor orders on any contract resulting from this Request for Quotation from State of Michigan authorized MIDEAL members. It is the responsibility of the contractor to ensure the non-state agency is an authorized MIDEAL member prior to extending the state contract price.~~

BIDDER MUST CHECK ONE BOX BELOW

— Commodities and/or services on this Request for Quotation will be supplied to State of Michigan departments and agencies, and authorized MIDEAL Program members in accordance with the terms and prices quoted. A complete listing of eligible participants in the MIDEAL Program will be provided if this option is selected.



~~[] Commodities and/or services on the Request for Quotation will not be supplied to State of Michigan authorized MIDEAL members. We will supply to State of Michigan departments and agencies only.~~

~~_____
Vendor Name~~

~~_____
Authorized Agent Name (print or type)~~



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 Acquisition Services ("OAS") and Michigan Lottery (ML) ~~[insert agency]~~ (collectively, including all other relevant State of Michigan departments and agencies, the "State"). OAS is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. **OAS is the only State office authorized to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of this Contract.** The Contractor Administrator within the Office of Acquisition Services for this Contract is:

Irene Pena
Office of Acquisition Services
Department of Management and Budget
Mason Bldg, 2nd Floor
PO Box 30026
Lansing, MI 48909
Penai1@michigan.gov
517-241-1647

2.015 Contract Compliance Inspector

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

**Linda Brown**

Assistant Director, Office of School Improvement
Michigan Department of Education
E-Mail: BrownLQ@michigan.gov
Phone: 517-373-3921

~~[CC]
Department of [Add Department]
Mason Bldg, 2nd Floor
PO Box 30026
Lansing, MI 48909
Email
Phone~~

2.016 Project Manager - RESERVED2.020 Contract Objectives/Scope/Background

2.021 Background - RESERVED ~~[This section should identify how this contract came to be. Any prior contracts or any laws that created the need for the project should be identified.]~~

2.022 Purpose - RESERVED

2.023 Objectives and Scope - RESERVED

~~[This section should identify what basic outcomes should be achieved by the end of the Contract. It may also be used to identify what is not part of the Contract. This section will be used to interpret the remainder of the Contract if there is any ambiguity in what was being purchased. It is not necessary to repeat the Statement of Work in detail here and this Section may simply reference back to the appropriate SOW.]~~

2.024 Interpretation – RESERVED

~~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 - RESERVED

2.030 Legal Effect and Term

2.031 Legal Effect

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

2.032 Contract Term

This Contract is for a period of three (3) years commencing on the date that the last signature required to make the Contract enforceable is obtained. All outstanding Purchase Orders shall also expire upon the termination (cancellation for any of the reasons listed in 2.210) of the Contract, unless otherwise extended pursuant to the



Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

2.033 Renewal(s)

This Contract may be renewed in writing by mutual agreement of the parties not less than thirty (30) days before its expiration. The Contract may be renewed for up to two (2) additional one (1) year periods. Successful completion of negotiations surrounding the terms of the extension, will be a pre-requisite for the exercise of any option year.

2.040 Contractor Personnel**2.041 Contractor Personnel**

- (a) Personnel Qualifications. All persons assigned by Contractor to the performance of Services under this Contract shall be employees of Contractor or its majority-owned (directly or indirectly, at any tier) subsidiaries (or a State-approved Subcontractor) and shall be fully qualified to perform the work assigned to them. Contractor shall include a similar provision in any subcontract entered into with a Subcontractor. For the purposes of this Contract, independent contractors engaged by Contractor solely in a staff augmentation role shall be treated by the State as if they were employees of Contractor for this Contract only; however, the State understands that the relationship between Contractor and Subcontractor is an independent contractor relationship.



- (b) Key Personnel
- (i) In discharging its obligations under this Contract, Contractor shall provide the named Key Personnel on the terms indicated. **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 Acquisition Services has given written consent to such delegation. The State shall have the right of prior written approval of all Subcontractors and to require Contractor to replace any Subcontractors found, in the reasonable judgment of the State, to be unacceptable. The State's request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good-faith reasons. Replacement Subcontractor(s) for the removed Subcontractor shall be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed Subcontractor, the State will agree to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with a removed Subcontractor results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in **Section 2.076** for a time agreed upon by the parties.
- (c) In any subcontracts entered into by Contractor for the performance of the Services, Contractor shall require the Subcontractor, to the extent of the Services to be performed by the Subcontractor, to be bound to Contractor by the terms of this Contract and to assume toward Contractor all of the obligations and responsibilities that Contractor, by this Contract, assumes toward the State. The State reserves the right to receive copies of and review all subcontracts, although Contractor may delete or mask any proprietary information, including pricing, contained in such contracts before providing them to the State. The management of any Subcontractor will be the responsibility of Contractor, and Contractor shall remain responsible for the performance of its Subcontractors to the same extent as if Contractor had not subcontracted such performance. Contractor shall make all payments to Subcontractors or suppliers of Contractor. Except as otherwise agreed in writing by the State and Contractor, the State will not be obligated to direct payments for the Services other than to Contractor. The State's written approval of any Subcontractor engaged by Contractor to perform any obligation under this Contract shall not relieve Contractor of any obligations or performance required under this Contract. Attached as **Exhibit 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 - RESERVED
- 2.052 PM Methodology Standards - RESERVED
- 2.053 Adherence to Portal Technology Tools - RESERVED
- 2.054 Acceptable Use Policy - RESERVED

2.060 Deliverables**2.061 Ordering**

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

- 2.062 Software - RESERVED
- 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 ~~(Optional)~~ Liquidated Damages - RESERVED



~~The parties acknowledge that [certain event] 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 such delay. Therefore, Contractor and the State agree that in the case of any such [certain event] in respect of which the State does not elect to exercise its rights under **Section 2.191**, the State may assess liquidated damages against Contractor as specified in this Section.~~

~~If [certain event] occurs, then the State shall be entitled to collect liquidated damages in the amount of \$5,000.00 and an additional \$100.00 per day for each day Contractor fails to remedy [certain event]. [Dollars must be an accurate representation of reasonably foreseeable damages attributable to losses incurred by the occurrence of the certain event. Please contact the Buyer for more information.]~~

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. ~~[Only use if timing is crucial to a fundamental state program]~~

2.076 Service Level Agreements (SLAs)

- (a) SLAs will be completed with the following operational considerations:
- (i) SLAs will not be calculated for individual Incidents where any event of Excusable Failure has occurred as defined in **Section 2.202**,
 - (ii) SLAs will not be calculated for individual Incidents where loss of service is planned and where the State has received prior notification and/or coordination.
 - (iii) SLAs will not apply if the applicable Incident could have been prevented through planning proposed by Contractor and not implemented at the request of the State. In order to invoke this consideration, complete documentation relevant to the denied planning proposal must be presented to substantiate the proposal.
 - (iv) Time period measurements will be based on the time Incidents are received by the Contractor and the time that the State receives notification of resolution based on 24x7x365 time period, except that the time period measurement will be suspended based on the following ("Stop-Clock Conditions"):
 - 1. Time period(s) will not apply where Contractor does not have access to a physical State Location and where access to the State Location is necessary for problem identification and resolution.
 - 2. Time period(s) will not apply where Contractor needs to obtain timely and accurate information or appropriate feedback and is unable to obtain timely and accurate information or appropriate feedback from the State.



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

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



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

2.080 Delivery and Acceptance of Deliverables

2.081 Delivery Responsibilities - RESERVED

2.082 Delivery of Deliverables

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 - RESERVED

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 - RESERVED

**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 the firm, fixed prices for all Services/Deliverables, and the associated payment milestones and payment amounts. To the extent the parties agree that certain specific Services will be provided on a time and materials basis, such Services shall be provided at the Amendment Labor Rates (**Article 1, Attachment C**). The State may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.
- (b) **Adjustments for Reductions in Scope of Services/Deliverables**
If the scope of the Services/Deliverables under any Statement of Work issued under this Contract is subsequently reduced by the State, the parties shall negotiate an equitable reduction in Contractor's charges under such Statement of Work commensurate with the reduction in scope, using the rates in **Article 1, Attachment** 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 - RESERVED

2.095 Electronic Payment Availability

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

2.100 Contract Management

2.101 Contract Management Responsibility

- (a) Contractor shall have overall responsibility for managing and successfully performing and completing the Services/Deliverables, subject to the overall direction and supervision of the State and with the participation and support of the State as specified in this Contract.



Contractor's duties will include monitoring and reporting the State's performance of its participation and support responsibilities (as well as Contractor's own responsibilities) and providing timely notice to the State in Contractor's reasonable opinion if the State's failure to perform its responsibilities in accordance with **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 - RESERVED****2.105 RESERVED****2.106 Change Requests**

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

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

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

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

- (a) Change Requests
 - (i) State Requests

If the State should require Contractor to perform New Work, Additional Services or make changes to the Services that would affect the Contract completion schedule or the amount of compensation due Contractor (a "Change"), the State shall submit a written request for Contractor to furnish a proposal for carrying out the requested Change (a "Change Request").
 - (ii) Contractor Recommendations

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



- (iv) By giving Contractor written notice within a reasonable time, the State shall be entitled to accept a Contractor proposal for Change, to reject it or to reach another agreement with Contractor. Should the parties agree on carrying out a Change, a written Contract Change Notice shall be prepared and issued under this Contract, describing the Change and its effects on the Services and any affected components of this Contract (a "Contract Change Notice").
- (v) No proposed Change shall be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the Department of Management and Budget, Office of Acquisition Services.
- (vi) If the State requests or directs Contractor to perform any activities that Contractor believes constitute a Change, Contractor must notify the State that it believes the requested activities are a Change prior to commencing the performance of the requested activities. If Contractor fails to so notify the State prior to commencing performance of the requested activities, such activities shall be considered to be performed gratuitously by Contractor, and Contractor shall not have any right thereafter to assert any claim for additional compensation or time for the performance of such activities. If Contractor commences performance of gratuitous services outside the scope of this Contract and subsequently elects to stop performing such out-of-scope services, Contractor must, at the request of the State, back out or reverse any changes resulting from such performance that would adversely affect the Contract.

2.107 Management Tools

Contractor will use an automated tool for planning, monitoring and tracking the Contract's progress. In addition, Contractor shall use automated project management tools as reasonably necessary to perform the Services, which tools shall include the capability to produce through the end of the Contract: (i) staffing tables with names of personnel assigned to Contract tasks, (ii) project plans showing tasks, subtasks, Deliverables and the resources required and allocated to each (including detailed plans for all Services to be performed within the next sixty (60) days, updated semi-monthly) and (iii) graphs showing critical events, dependencies and decision points during the course of the Contract.

Any tool(s) used by Contractor for such purposes must produce information of a type and in a manner and format that will support reporting in compliance with the State's standard to the extent such information is described with reasonable detail in the Statements of Work and to the extent the related work is of sufficient project complexity and duration to warrant such reporting.

2.110 Records and Inspections

2.111a Records and Inspections - RESERVED

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 - RESERVED**2.130 Security**2.131 Background Checks**

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

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

2.140 Reserved2.150 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 - RESERVED****2.162 Source Code Escrow - RESERVED****2.163 Rights in Data - RESERVED****2.164 Ownership of Materials - RESERVED****2.165 Standard Software - RESERVED****2.166 Pre-existing Materials for Custom Software Deliverables - RESERVED****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 - RESERVED****2.172 Software Warranties - RESERVED****2.173 Equipment Warranty - RESERVED****2.174 Physical Media Warranty - RESERVED****2.175a Disclaimer - RESERVED****2.175b Standard Warranties - RESERVED****2.176 Consequences For Breach - RESERVED**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 both parties sign the Contract or before the purchase order is issued by the State, the Contractor must furnish to the Director of Acquisition Services, certificate(s) of insurance verifying insurance coverage ("Certificates"). The Certificate must be on the standard "accord" form or equivalent. **THE CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING.** All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) shall contain a provision indicating that coverages afforded under the policies WILL NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED without THIRTY (30) days prior written notice, except for ten (10) days for non-payment of premium, having been given to the Director of Acquisition Services, Department of Management and Budget. The notice must include the Contract or Purchase Order number affected and be mailed to: Director, Acquisition Services, Department of Management and Budget, P.O. Box 30026, Lansing, Michigan 48909. Failure to provide evidence of coverage, may, at the State's sole option, result in this Contract's termination.

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

1. Commercial General Liability with the following minimum coverage:

\$2,000,000 General Aggregate Limit other than Products/Completed Operations
 \$2,000,000 Products/Completed Operations Aggregate Limit
 \$1,000,000 Personal & Advertising Injury Limit
 \$1,000,000 Each Occurrence Limit
 \$500,000 Fire Damage Limit (any one fire)

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

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

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



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

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

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

4. Employers liability insurance with the following minimum limits:
- \$100,000 each accident
 - \$100,000 each employee by disease
 - \$500,000 aggregate disease

(b) Subcontractors

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

(c) Certificates of Insurance and Other Requirements

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

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

2.190 Indemnification**2.191 Indemnification**

- (a) **General Indemnification**
To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties), accruing or resulting to any person, firm or corporation that may be injured or damaged by the Contractor in the performance of this Contract and that are attributable to the negligence or tortious acts of the Contractor or any of its subcontractors, or by anyone else for whose acts any of them may be liable.
- (b) **Code Indemnification**
To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from any claim, loss, or expense arising from Contractor's breach of the No Surreptitious Code Warranty.
- (c) **Employee Indemnification**
In any and all claims against the State of Michigan, its departments, divisions, agencies, sections, commissions, officers, employees and agents, by any employee of the Contractor or any of its subcontractors, the indemnification obligation under the Contract shall not be limited in any way by the amount or type of damages, compensation or benefits payable by or for the Contractor or any of its subcontractors under worker's disability compensation acts, disability benefit acts or other employee benefit acts. This indemnification clause is intended to be comprehensive. Any overlap in provisions, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other provisions.
- (d) **Patent/Copyright Infringement Indemnification**
To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against the State to the extent that such action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or the operation of such equipment, software, commodity or service, or the use or reproduction of any documentation provided with such equipment, software, commodity or service infringes any United States patent, copyright, trademark or trade secret of any person or entity, which is enforceable under the laws of the United States.

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

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

2.192 Continuation of Indemnification Obligations

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



2.193 Indemnification Procedures

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

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

2.200 Limits of Liability and Excusable Failure

2.201 Limits of Liability

The Contractor's liability for damages to the State shall be limited to two times the value of the Contract or \$200,000 which ever is higher. The foregoing limitation of liability shall not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

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



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

2.202 Excusable Failure

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

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

If any of the above-enumerated circumstances substantially prevent, hinder, or delay Contractor's performance of the Services/provision of Deliverables for more than ten (10) Business Days, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State in its reasonable discretion, then at the State's option: (a) the State may procure the affected Services/Deliverables from an alternate source, and the State shall not be liable for payment for the unperformed Services/ Deliverables not provided under the Contract for so long as the delay in performance shall continue; (b) the State may terminate any portion of the Contract so affected and the charges payable there under shall be equitably adjusted to reflect those Services/Deliverables terminated; or (c) the State may terminate the affected Statement of Work without liability to Contractor as of a date specified by the State in a written notice of termination to Contractor, except to the extent that the State shall pay for Services/Deliverables provided through the date of termination. Contractor will not have the right to any additional payments from the State as a result of any Excusable Failure occurrence or to payments for Services not rendered/Deliverables not provided as a result of the Excusable Failure condition. Defaults or delays in performance by Contractor which are caused by acts or omissions of its Subcontractors will not relieve Contractor of its obligations under the Contract except to the extent that a Subcontractor is itself subject to an Excusable Failure condition described above and Contractor cannot reasonably circumvent the effect of the Subcontractor's default or delay in performance through the use of alternate sources, workaround plans or other means.

2.203 Disaster Recovery

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

2.210 Termination/Cancellation by the State

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

**2.211 Termination for Cause**

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

2.212 Termination for Convenience

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

2.213 Non-Appropriation

- (a) Contractor acknowledges that, if this Contract extends for several fiscal years, continuation of this Contract is subject to appropriation or availability of funds for this Contract. If funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available, the State shall have the right to terminate this Contract and all affected Statements of Work, in whole or in part, at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Contractor. The State shall give Contractor at least thirty (30) days advance written notice of termination for non-appropriation or unavailability (or such time as is available if the State receives notice of the final decision less than thirty (30) days before the funding cutoff).



- (b) If funding for the Contract is reduced by law, or funds to pay Contractor for the agreed-to level of the Services or production of Deliverables to be provided by Contractor are not appropriated or otherwise made available, the State may, upon thirty (30) days written notice to Contractor, reduce the level of the Services or the change the production of Deliverables in such manner and for such periods of time as the State may elect. The charges payable under this Contract will be equitably adjusted to reflect any equipment, services or commodities not provided by reason of such reduction.
- (c) In the event the State terminates this Contract, eliminates certain Deliverables, or reduces the level of Services to be provided by Contractor pursuant to this Section, the State shall pay Contractor for all Work-in-Process performed through the effective date of the termination or reduction in level, as the case may be and as determined by the State, to the extent funds are available. For the avoidance of doubt, this Section will not preclude Contractor from reducing or stopping Services/Deliverables and/or raising against the State in a court of competent jurisdiction, any claim for a shortfall in payment for Services performed or Deliverables finally accepted before the effective date of termination.

2.214 Criminal Conviction

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

2.215 Approvals Rescinded

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

2.216 Rights and Obligations Upon Termination

- (a) If this Contract is terminated by the State for any reason, Contractor shall (a) stop all work as specified in the notice of termination, (b) take any action that may be necessary, or that the State may direct, for preservation and protection of Deliverables or other property derived or resulting from this Contract that may be in Contractor's possession, (c) return all materials and property provided directly or indirectly to Contractor by any entity, agent or employee of the State, (d) in the event that the Contractor maintains title in Deliverables that is intended to be transferred to the State at the termination of the Contract, Contractor will transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables intended to be transferred to the State at the termination of the Contract and which are resulting from the Contract (which shall be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of such items included compensation to Contractor for the provision of warranty services in respect of such materials), and (e) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract.
- (b) In the event the State terminates this Contract prior to its expiration for its own convenience, the State shall pay Contractor for all charges due for Services provided prior to the date of termination and, if applicable, as a separate item of payment pursuant to this Contract, for Work In Process, on a percentage of completion basis at the level of completion determined by the State. All completed or partially completed Deliverables prepared by Contractor pursuant to this Contract shall, at the option of the State, become the State's property, and Contractor shall be entitled to receive equitable fair compensation for such Deliverables. Regardless of the basis for the termination, the State shall not be obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.



- (c) Upon a good faith termination, the State shall have the right to assume, at its option, any and all subcontracts and agreements for services and deliverables provided under this Contract, and may further pursue completion of the Services/Deliverables under this Contract by replacement contract or otherwise as the State may in its sole judgment deem expedient.

2.217 Reservation of Rights

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

2.218 Contractor Transition Responsibilities

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

- (a) Personnel - The Contractor shall work with the State, or a specified third party, to develop a transition plan setting forth the specific tasks and schedule to be accomplished by the parties, to effect an orderly transition. The Contractor shall allow as many personnel as practicable to remain on the job to help the State, or a specified third party, maintain the continuity and consistency of the services required by this Contract. In addition, during or following the transition period, in the event the State requires the Services of the Contractor's subcontractors or vendors, as necessary to meet its needs, Contractor agrees to reasonably, and with good-faith, work with the State to use the Services of Contractor's subcontractors or vendors. Contractor will notify all of Contractor's subcontractors of procedures to be followed during transition.
- (b) Information - The Contractor agrees to provide reasonable detailed specifications for all Services/Deliverables needed by the State, or specified third party, to properly provide the Services/Deliverables required under this Contract. The Contractor will provide the State with asset management data generated from the inception of this Contract through the date on which this Contractor is terminated in a comma-delineated format unless otherwise requested by the State. The Contractor will deliver to the State any remaining owed reports and documentation still in Contractor's possession subject to appropriate payment by the State.
- (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 Acquisition Services, DMB, or designee, for the purpose of attempting to resolve such dispute without the need for formal legal proceedings, as follows:
- (i) The representatives of Contractor and the State shall meet as often as the parties reasonably deem necessary in order to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.
 - (ii) During the course of negotiations, all reasonable requests made by one party to another for non-privileged information reasonably related to the Contract will be honored in order that each of the parties may be fully advised of the other's position.
 - (iii) The specific format for the discussions will be left to the discretion of the designated State and Contractor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.
 - (iv) Following the completion of this process within sixty (60) calendar days, the Director of Acquisition Services, DMB, or designee, shall issue a written opinion regarding the issue(s) in dispute within thirty (30) calendar days. The opinion regarding the dispute shall be considered the State's final action and the exhaustion of administrative remedies.
- (b) This **Section 2.250** will not be construed to prevent either party from instituting, and a party is authorized to institute, formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or pursuant to **Section 2.253**.
- (c) The State will not mediate disputes between the Contractor and any other entity, except state agencies, concerning responsibility for performance of work pursuant to the Contract.

2.253 Injunctive Relief

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

2.254 Continued Performance

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

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

In the performance of the Contract, Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, physical or mental disability. Contractor further agrees that every subcontract entered into for the performance of this Contract or any purchase order resulting from this Contract will contain a provision requiring non-discrimination in employment, as specified here, binding upon each Subcontractor.



This covenant is required pursuant to the Elliot Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, and any breach of this provision may be regarded as a material breach of the Contract.

2.262 Unfair Labor Practices

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

2.263 Workplace Safety and Discriminatory Harassment

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

2.270 Litigation

2.271 Disclosure of Litigation

- (a) Disclosure. Contractor must disclose any material criminal litigation, investigations or proceedings involving the Contractor (and each Subcontractor) or any of its officers or directors or any litigation, investigations or proceedings under the Sarbanes-Oxley Act. In addition, each Contractor (and each Subcontractor) must notify the State of any material civil litigation, arbitration or proceeding which arises during the term of the Contract and extensions thereto, to which Contractor (or, to the extent Contractor is aware, any Subcontractor hereunder) is a party, and which involves: (i) disputes that might reasonably be expected to adversely affect the viability or financial stability of Contractor or any Subcontractor hereunder; or (ii) a claim or written allegation of fraud against Contractor or, to the extent Contractor is aware, any Subcontractor hereunder by a governmental or public entity arising out of their business dealings with governmental or public entities. Any such litigation, investigation, arbitration or other proceeding (collectively, "Proceeding") must be disclosed in a written statement to the Contract Administrator within thirty (30) days of its occurrence. Details of settlements which are prevented from disclosure by the terms of the settlement may be annotated as such. Information provided to the State from Contractor's publicly filed documents referencing its material litigation will be deemed to satisfy the requirements of this Section.
- (b) Assurances. In the event that any such Proceeding disclosed to the State pursuant to this Section, or of which the State otherwise becomes aware, during the term of this Contract would cause a reasonable party to be concerned about:
- (i) the ability of Contractor (or a Subcontractor hereunder) to continue to perform this Contract in accordance with its terms and conditions, or
 - (ii) whether Contractor (or a Subcontractor hereunder) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in such Proceeding, which conduct would constitute a breach of this Contract or a violation of Michigan law, regulations or public policy, then Contractor shall be required to provide the State all reasonable assurances requested by the State to demonstrate that:
 - (A) Contractor and/or its Subcontractors hereunder will be able to continue to perform this Contract and any Statements of Work in accordance with its terms and conditions, and



- (B) Contractor and/or its Subcontractors hereunder have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in such Proceeding.
- (c) Contractor shall make the following notifications in writing:
- (1) Within thirty (30) days of Contractor becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor shall notify the Office of Acquisition Services.
 - (2) Contractor shall also notify the Office of Acquisition Services within thirty (30) days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.
 - (3) Contractor shall also notify Acquisition Services within thirty (30) days whenever changes to company affiliations occur.

2.272 Governing Law

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

2.273 Compliance with Laws

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

2.274 Jurisdiction

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

2.280 Environmental Provision

2.281 Environmental Provision

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

- (a) The Contractor shall use, handle, store, dispose of, process, transport and transfer any material considered a Hazardous Material in accordance with all federal, State and local laws. The State shall provide a safe and suitable environment for performance of Contractor's Work. Prior to the commencement of Work, the State shall advise Contractor of the presence at the work site of any Hazardous Material to the extent that the State is aware of such Hazardous Material.



If the Contractor encounters material reasonably believed to be a Hazardous Material and which may present a substantial danger, the Contractor shall immediately stop all affected Work, give written notice to the State of the conditions encountered, and take appropriate health and safety precautions.

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

2.290 *General*

2.291 Amendments

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

2.292 Assignment

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

**2.293 Entire Contract; Order of Precedence**

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

2.294 Headings

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

2.295 Relationship of the Parties (Independent Contractor Relationship)

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

2.296 Notices

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

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

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

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

2.297 Media Releases and Contract Distribution

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



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

2.298 Reformation and Severability

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

2.299 Consents and Approvals

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

2.300 No Waiver of Default

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

2.301 Survival

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

2.302 Covenant of Good Faith

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

2.303 Permits

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

2.304 Website Incorporation

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

2.305 Taxes

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

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

**2.306 Prevailing Wage**

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

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

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

2.307 Call Center Disclosure – RESERVED**2.308 Future Bidding Preclusion**

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

2.310 Reserved

2.320 Extended Purchasing

2.321 MiDEAL - RESERVED**2.322 State Employee Purchases - RESERVED**

2.330 Federal Grant Requirements

2.331 Federal Grant Requirements - RESERVED

PPA agrees to all terms and conditions, as worded, that are included in the Contract.

Price Proposal

PPA proposes a firm, fixed price of \$109,118. The following pricing is based on conducting a survey of 108 local education agencies, 50 schools, and 1,000 parents, in addition to the analysis of MEAP data. If MDE wished to do more or less, PPA can make price adjustments accordingly.

Personnel:

The following hourly labor rates will remain intact for the duration of the contract:



Hourly Labor Rates

Staff Member	Hourly Rate
Nancy C. Hewat, Ph.D., Project Director	\$175
Laurence S. Rosen, Ph.D., Senior Research Consultant	\$130
Douglas C. Drake, Senior Policy Consultant	\$175
Lisa M. Marckini, Senior Research Consultant	\$115
Ferzana Havewala, Research Consultant	\$85
William A. Edwards, Research Consultant	\$85
Colleen Graber, Research Consultant	\$85
Administrative Assistant and Editor	\$65

Personnel Costs by Task

Task	Total
Task 1	\$13,525.00
Task 2	\$14,125.00
Task 3	\$39,150.00
Task 4	\$37,450.00
Total Personnel Costs	\$104,250.00

Direct Costs: Division expenses include supplies and materials (including copies, production of reports, and miscellaneous meeting supplies), long distance telephone and fax charges, and postage and overnight mail costs.

Direct Costs

Item	Total
Copies/printing	\$1,500.00
Phone & fax	\$225.00
Postage, overnight mail, shipping	\$1,200.00
Supplies/miscellaneous	\$1,500.00
Total Direct Costs	\$4,425.00

Total Project Cost

Item	Total
Personnel	\$104,250.00
Other direct costs	\$4,425.00
Administrative fee on expenses (10%)	\$443.00
Total Project Costs	\$109,118.00
