

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

December 16, 2009

CHANGE NOTICE NO. 4  
TO  
CONTRACT NO. 071B6200401  
between  
THE STATE OF MICHIGAN  
and

NAME & ADDRESS OF VENDOR <b>SAP Public Services, Inc.</b> <b>The Ronald Reagan Building</b> <b>1300 Pennsylvania Avenue, NW</b> <b>Suite 600/North Tower/Gray</b> <b>Washington, DC 20004</b>  <b>Christopher.pfendner@sap.com</b>	TELEPHONE (610) 661-3653 <b>Chris Pfendner</b>
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 373-3993 <b>Dale N. Reif</b>
Contract Compliance Inspector: Mark Lawrence <b>Michigan Integrated Tax Administration</b>	
CONTRACT PERIOD: From: <b>September 8, 2006</b> To: <b>August 31, 2010</b>	
TERMS <b>N/A</b>	SHIPMENT <b>N/A</b>
F.O.B. <b>N/A</b>	SHIPPED FROM <b>N/A</b>
MINIMUM DELIVERY REQUIREMENTS <b>N/A</b>	

**NATURE OF CHANGE (S):**

Effective immediately this contract is hereby **INCREASED** by \$214,373.00 and **EXTENDED** to August 31, 2010. All other terms, conditions and specifications remain the same.

**AUTHORITY/REASON:**

Per Ad Board approval on 12/15/2009.

**INCREASE: \$214,373.00**

**TOTAL REVISED ESTIMATED CONTRACT VALUE: \$2,783,669.42**

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

October 22, 2008

CHANGE NOTICE NO. 3  
TO  
CONTRACT NO. 071B6200401  
between  
THE STATE OF MICHIGAN  
and

NAME & ADDRESS OF VENDOR <b>SAP Public Services, Inc.</b> <b>The Ronald Reagan Building</b> <b>1300 Pennsylvania Avenue, NW</b> <b>Suite 600/North Tower/Gray</b> <b>Washington, DC 20004</b>  <b>Christopher.pfendner@sap.com</b>	TELEPHONE (610) 661-3653 <b>Chris Pfendner</b>
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 373-3993 <b>Dale N. Reif</b>
Contract Compliance Inspector: Mark Lawrence <b>Michigan Integrated Tax Administration</b>	
CONTRACT PERIOD: From: <b>September 8, 2006</b> To: <b>December 31, 2009</b>	
TERMS <b>N/A</b>	SHIPMENT <b>N/A</b>
F.O.B. <b>N/A</b>	SHIPPED FROM <b>N/A</b>
MINIMUM DELIVERY REQUIREMENTS <b>N/A</b>	

**NATURE OF CHANGE (S):**

Effective immediately this contract is hereby **INCREASED** by \$257,148.00. All other terms, conditions and specifications remain the same.

**AUTHORITY/REASON:**

Per Ad Board approval on 9/30/2008.

**INCREASE: \$257,148.00**

**TOTAL REVISED ESTIMATED CONTRACT VALUE: \$2,569,296.42**

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

September 9, 2008

**CHANGE NOTICE NO. 2**  
**TO**  
**CONTRACT NO. 071B6200401**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF VENDOR <b>SAP Public Services, Inc.</b> <b>The Ronald Reagan Building</b> <b>1300 Pennsylvania Avenue, NW</b> <b>Suite 600/North Tower/Gray</b> <b>Washington, DC 20004</b>  <b>Christopher.pfendner@sap.com</b>	TELEPHONE (610) 661-3653 <b>Chris Pfendner</b>
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 373-3993 <b>Dale N. Reif</b>
Contract Compliance Inspector: Mark Lawrence <b>Michigan Integrated Tax Administration</b>	
CONTRACT PERIOD: From: <b>September 8, 2006</b> To: <b>December 31, 2009</b>	
TERMS <p style="text-align: center;"><b>N/A</b></p>	SHIPMENT <p style="text-align: center;"><b>N/A</b></p>
F.O.B. <p style="text-align: center;"><b>N/A</b></p>	SHIPPED FROM <p style="text-align: center;"><b>N/A</b></p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;"><b>N/A</b></p>	

**NATURE OF CHANGE (S):**

Effective immediately this contract is hereby EXTENDED (12 months) to 12/31/2009. The attached letter modifies Appendix No. 1 effective September 5, 2006. All other terms, conditions, specifications, and pricing remain the same.

Overview of Optional Extension

<input checked="" type="checkbox"/>	Option CN2	(1/1/09 – 12/31/09)
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Overview previously exercised optional extensions

<input checked="" type="checkbox"/>	Option CN1	(9/5/08 – 12/31/08)
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Overview of Remaining Optional Extension

<input type="checkbox"/>	Option	(1/1/10 – 9/7/10)
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**AUTHORITY/REASON:**

Per Contractor and DIT agreement.

**TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$2,312,148.42**

**Amendment No. 1 ("Amendment")**  
 to  
**Appendix No. 1 effective September 5, 2006 ("Appendix")**  
 to  
**Attachment 1 (the "Agreement")**  
 to  
**Contract No. 071B6200401**  
 between  
**SAP Public Services, Inc.**  
 and  
**the State of Michigan, Department of Management and Budget**

This Amendment No. 1 (Amendment") to Appendix No. 1 effective September 5, 2006 ("Appendix") to Attachment 1 ("Agreement") of Contract No. 071B6200401 (the "Contract") between SAP Public Services, Inc. ("SAP") and the State of Michigan (the "Licensee") hereby amends the terms of the Appendix as described below in order to reflect the mutual understandings and agreements made pertinent to the subject matter described herein.

The parties hereby agree to amend the Appendix as follows:

1. Section 2.1.1 of Appendix 1 is hereby amended to reflect that the Licensee has elected to exchange thirty-four (34) of its previously licensed three hundred (300) Application Professional Users in return for eighteen (18) additional Application Developer Users, for which there was a previously licensed quantity of twelve (12). Adjusted User totals and types are set forth in the table below:

**SAP Application Users.com Solution Suite:**

<u>"X" if Licensed</u>	<u>SAP Application Professional</u>	<u>SAP Application Limited Professional</u>	<u>Number of Users Licensed: SAP Application Employee</u>	<u>SAP Application Employee Self Service (ESS)</u>	<u>SAP Application Developer</u>
<u>X</u>	<u>266</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>30</u>

2. Section 10 of Appendix 1 is hereby deleted and is replaced with the following:

**"10. Future License Option.** Licensee may purchase the additional quantities of Software listed below for a Net License Fee of USD 1,108,500 by executing applicable Appendices to the Agreement on or before September 4, 2008. In the event that such purchase option is not exercised by Licensee on or before September 4, 2008, Licensee may purchase the additional quantities of Software listed below for a Net License Fee of USD 1,450,000, exclusive of associated fees for any third party database and maintenance fees, by executing applicable Appendices to the Agreement on or before December 15, 2009. Maintenance Fees (i.e., SAP Enterprise Support Services) will be assessed at the then current factor in effect multiplied by the pertinent net license fee, which Licensee shall be responsible to order and pay in connection with the exercise of this option.

<u>Software</u>	<u>Quantity/Metric</u>
SAP Application Professional Users	700 Users
SAP Tax & Revenue Management for Public Sector	6,750,000 Business Partners
Database Interface for above Software	None"

3. The following new Section 12 is hereby added to the Appendix:

SEP - 8 2008

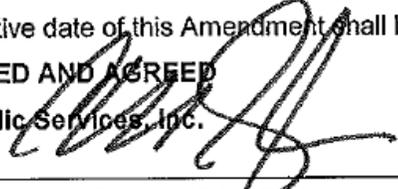
**"12. Training Services Credit.** SAP agrees to provide Licensee with up to USD 20,000 in SAP Training Services free of charge, excluding related travel and other expenses which shall be invoiced in accordance with the State's then current travel reimbursement rates. The Licensee, by virtue of its execution of this Amendment, signifies its acceptance and advance approval to accept and pay SAP's travel and other expenses incurred in connection with the provision of the Training Services to which this credit is applied. The SAP prices/rates used in determining the amount of Services provided by SAP will be in accordance with either the then current list price SAP classroom instruction fees or the then current list price hourly Training Services E-rates, as applicable. Such Services (1) will be provided subject to a mutually agreed Statement of Work executed between Licensee and SAP, if applicable; (2) will be performed by SAP within the United States; and (3) must be requested by Licensee and performed by SAP prior to December 31, 2008. There shall be no refund for unused credits."

Except as provided above, all other terms and conditions of the Appendix, Agreement and Contract remain unchanged.

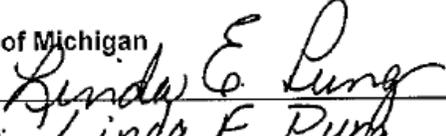
The effective date of this Amendment shall be the date of the last signature below.

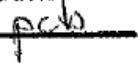
**ACCEPTED AND AGREED**

SAP Public Services, Inc.

By:   
Name: CHRIS PFENDNER  
Title: DIRECTOR-CONTRACTS  
Date: 9/3/08

State of Michigan

By:   
Name: Linda E Pung  
Title: Information Officer, MDIT  
Date: 8-29-08

Reviewed by Contracts  
Patrick Burch, Jr. 

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

December 4, 2007

**CHANGE NOTICE NO. 1  
 TO  
 CONTRACT NO. 071B6200401  
 between  
 THE STATE OF MICHIGAN  
 and**

NAME & ADDRESS OF VENDOR  <b>SAP Public Services, Inc.          The Ronald Reagan Building          1300 Pennsylvania Avenue, NW          Suite 600/North Tower/Gray          Washington, DC 20004</b>	TELEPHONE (202) 312-3500
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 373-3993 <b>Dale N. Reif</b>
Contract Compliance Inspector: Mark Lawrence <b>Michigan Integrated Tax Administration</b>	
CONTRACT PERIOD: From: <b>September 8, 2006</b> To: <b>December 31, 2008</b>	
TERMS <p style="text-align: center;">N/A</p>	SHIPMENT <p style="text-align: center;">N/A</p>
F.O.B. <p style="text-align: center;">N/A</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	

**NATURE OF CHANGE (S):**

Effective immediately this contract is hereby INCREASED by \$462,148.42 and EXTENDED (4 months) to 12/31/2008. This change will for the required time and funding necessary to conduct SAP training. All other terms, conditions, specifications, and pricing remain the same.

Overview of Optional Extension

<input checked="" type="checkbox"/> Option	(9/5/08 – 12/31/08)
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Overview of Contract Increase

Previous Contract Value:	\$ 1,850,000.00
CN 1 Increase:	\$ 462,148.42

**AUTHORITY/REASON:**

Per Contractor and DIT agreement and Administrative Board Approval on December 4, 2007.

**TOTAL REVISED ESTIMATED CONTRACT VALUE: \$2,312,148.42**

## Training Plan for MBT/MIITAS

### Courses Slated for 2007

Course Name	Number of Participants	Cost	Date
SAP01/WNA PSF/IPS510	34	\$92,575	Nov 5-9, 13-16
SAP TEC	11	\$18,612.50	Nov 26-28
ADM100/ADM102/ADM106	9	\$30,500	Dec 3-7
BC400 ABAP Workbench/BC430 ABAP Dictionary	9	\$29,306.25	Dec 17-21
<b>Total Cost</b>		<b>\$170,993.75</b>	

### eLearning required for 2007

eLearning	Number of Participants	Cost
SAP 110 eLearning	26	\$0
SAP123 Navigation	26	\$1950
NW400 Web Application Server Development Overview	22	\$9750
<b>Total Cost</b>		<b>\$11,700</b>

### 2007 Training Costs \$182,693.75

### Courses slated for 2008

Course Name	Number of Participants	Cost	Date
BRF/Business Rules Framework	22	\$53,387.50	Jan 7-11
BIT51/ Tech. Implementation and Operation II	8	\$28,200	Jan 14-18
BIT400/SAP Exchange Infrastructure	9	\$27,356.25	Jan 28-Feb 1
BIT430/Business Process Mgmt.	9	\$16,793.75	Feb 5-7
ADM940/SAP Authorization, ADM950/System Mgmt, ADM960/Security in SAP System Environment	8	\$27,700	Feb 11-15
BC480/ PDF-Based Print Forms	11	\$19,381.25	Feb 19-21
Solutions Manager	8	\$25,200	Mar 3-7
ADM315/Workload Analysis	8	\$17,300	Mar 18-20
ADM505/Oracle Database	8	\$17,300	Apr 1-3
ADM107/System Monitoring	8	\$11,850	Oct 7-9
<b>Total Cost</b>		<b>\$244,468.75</b>	

**eLearning required for 2008**

eLearning	Number of Participants	Cost
NW400	22	\$9570
TBIT50/Tech. Implementation and Operation I	8	\$3,480
<b>Total Cost</b>		<b>\$13,050</b>

**2008 Training Costs \$257,518.75**

**Total Training Costs \$440,212.50**

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

September 14, 2006

**NOTICE**  
**OF**  
**CONTRACT NO. 071B6200401**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF VENDOR	TELEPHONE <b>(202) 312-3500</b>
<b>SAP Public Services, Inc.</b> <b>The Ronald Reagan Building</b> <b>1300 Pennsylvania Avenue, NW</b> <b>Suite 600/North Tower/Gray</b> <b>Washington, DC 20004</b>	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 373-3993 <b>Dale N. Reif</b>
Contract Compliance Inspector: Mark Lawrence <b>Michigan Integrated Tax Administration</b>	
CONTRACT PERIOD: From: <b>September 8, 2006</b> To: <b>September 7, 2008</b>	
TERMS <p style="text-align: center;"><b>N/A</b></p>	SHIPMENT <p style="text-align: center;"><b>N/A</b></p>
F.O.B. <p style="text-align: center;"><b>N/A</b></p>	SHIPPED FROM <p style="text-align: center;"><b>N/A</b></p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;"><b>N/A</b></p>	
MISCELLANEOUS INFORMATION: The terms and conditions of this Contract are contained within this Contract Document.	

**Estimated Contract Value:      \$1,850,000.00**

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

**CONTRACT NO. 071B6200401**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF VENDOR  <b>SAP Public Services, Inc.</b> <b>The Ronald Reagan Building</b> <b>1300 Pennsylvania Avenue, NW</b> <b>Suite 600/North Tower/Gray</b> <b>Washington, DC 20004</b>	TELEPHONE (202) 312-3500  VENDOR NUMBER/MAIL CODE  BUYER/CA (517) 373-3993 <b>Dale N. Reif</b>
Contract Compliance Inspector: Mark Lawrence <p style="text-align: center;"><b>Michigan Integrated Tax Administration</b></p>	
CONTRACT PERIOD: From: <b>September 8, 2006</b> To: <b>September 7, 2008</b>	
TERMS <p style="text-align: center;"><b>N/A</b></p>	SHIPMENT <p style="text-align: center;"><b>N/A</b></p>
F.O.B. <p style="text-align: center;"><b>N/A</b></p>	SHIPPED FROM <p style="text-align: center;"><b>N/A</b></p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;"><b>N/A</b></p>	
MISCELLANEOUS INFORMATION: The terms and conditions of this Contract are contained within this Contract Document.	
<b>Estimated Contract Value: \$1,850,000.00</b>	

**THIS IS NOT AN ORDER:** A Purchase Order Form may be issued only as the requirements of the Department of Information Technology are submitted to Acquisition Services. Orders for delivery may be issued directly by the Department of Information Technology through the issuance of a Purchase Order Form.

**FOR THE CONTRACTOR:**

**SAP Public Services, Inc.**  
 \_\_\_\_\_  
 Firm Name

\_\_\_\_\_  
 Authorized Agent Signature

Mary Beth Hanss, Vice President and Assistant  
 General Counsel

\_\_\_\_\_  
 Date

**FOR THE STATE:**

\_\_\_\_\_  
 Signature

**Greg Faremouth, Buyer Manager**  
 \_\_\_\_\_  
 Name

**IT Division**  
 \_\_\_\_\_  
 Division

\_\_\_\_\_  
 Date



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

### **1.0 Project Identification**

The State of Michigan (State), through the Michigan Department of Management & Budget (MDMB), with assistance of the Michigan Department of Information Technology (MDIT), and on behalf of the Michigan Department of Treasury (Treasury), has issued this Contract for acquisition of certain software (COTS) licenses (the “Software,” associated software maintenance/support, and related consulting and training services. This acquisition is in support of Treasury’s Business Tax Registration and Sales, Use, and Withholding (SUW) Tax processes. Phase 1 includes the Business Tax Registration and Sales, Use and Withholding (SUW) Tax processes.

It is the State’s intention that the aforementioned COTS product will provide the framework for a new Michigan Integrated Tax Administration System (MIITAS) to which all mainframe Tax and Revenue systems will transition in future projects. This project defines Phase 1.

### **1.1 Scope of Work and Contractor Responsibilities**

#### **1.101 IN SCOPE**

- (a) Contractor’s Software, maintenance, and project team training, pursuant to the provisions of: Contractor’s Software License Agreement, including Schedules and Appendices thereto (Attachment 1), executed by both parties, and attached hereto and incorporated herein.
- (b) Contractor consulting services, pursuant to Consulting Statement of Work (Attachment 2), attached hereto and incorporated herein.

#### **1.102 OUT OF SCOPE**

Hardware products are not part of this contract.

#### **1.103 ENVIRONMENT**

Contractor staff will submit their laptops to the State’s virus scanning before the State’s network is accessed, to minimize the risk of infection/contamination of the State’s infrastructure.

#### **1.104 WORK AND DELIVERABLES**

1. Software (COTS), Maintenance and project team training as defined in Section 1.101 (a) above. The contract period specified in Form DMB 234 shall not apply to the software license in 1.101 (a) above. Such software license shall be perpetual unless terminated pursuant to the provisions of Attachment 1 hereto.
2. Contractor Consulting Services as provided in Contractor’s Consulting Services Statement of Work, as defined in Section 1.101 (b), Attachment 2 hereto, incorporated herein. Provisions of Article 2 hereunder shall apply only to the Services of Section 1.101 (b) and shall apply to neither Contractor’s responsibilities as set forth in Section 1.101 (a) above, or any other services which may be acquired by the State from Contractor presently, or at any future time.

**1.2 Reserved**

**1.3 Reserved**



1.4 *Reserved*

1.5 *Reserved*

1.6 *Compensation and Payment*

**1.601 Compensation And Payment**

Please refer to Attachment 1, Software License Agreement and Attachment 2, Consulting Statement of Work for details.

1.7 *Reserved*



## Article 2 – General Terms and Conditions

This Article 2 pertains solely to Contractor Consulting Statement of Work Services (Attachment 2) to be provided pursuant to the Contract. Applicable Software, Maintenance, and project team training provisions are set forth in Attachment 1 to the Contract, containing the Software License Agreement and its Appendices, and are not subject to the provisions of this Article 2. Any Additional Services will be subject to terms and conditions defined and agreed to separately in a new article.

### 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.
- (c) “Additional Service” means any Services 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 applicable to Additional Services, if any as defined in the Consulting Services SOW.
- (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.
- (ff) “Contractor” means SAP Public Services, Inc.
- (i) “Deliverable” pursuant to this Article 2, means the “Services” provided by SAP, pursuant to definition (l) “Services” below.
- (k) “New Work” means any Services outside the scope of the Contract and not specifically provided under the Consulting Services Statement of Work (Attachment 2), 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 the consulting services performed for the benefit of the State pursuant to the Consulting Services SOW (Attachment 2). Services does not include the SAP Software Agreement (Attachment 1).
- (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.

#### 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 to be rendered by Contractor pursuant to this Contract Article 2 (and any future amendments of it) will be defined and described in detail in the Statement of Work or Purchase Order (PO) executed under this Contract. Contractor shall not be obliged or authorized to commence any work to implement the 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 Statement of Work/Purchase Order executed under it. Preprinted terms accompanying or on the reverse side of the PO do not apply.
- (b) Unless otherwise agreed by the parties, the 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;
    - if applicable, 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 Statement of Work, as of the Effective Date, is attached to this Contract as Attachment 2, "Consulting Statement of Work."

#### 2.014 Issuing Office

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

[Dale N. Reif](#)  
 Office of Purchasing Operations  
 Department of Management and Budget  
 Mason Bldg, 2nd Floor  
 PO Box 30026  
 Lansing, MI 48909  
[Email reifd@michigan.gov](mailto:reifd@michigan.gov)  
[Phone \(517\) 373-3993](tel:5173733993)

#### 2.015 Contract Compliance Inspector

Upon receipt at Purchasing Operations of the properly executed Contract, it is anticipated that the Director of DMB Purchasing Operations, in consultation with the Department of Information Technology, 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 Purchasing Operations.** The Contract Compliance Inspector for this Contract is:

Mark Lawrence  
 Department of Information Technology  
 Mason Bldg, 2nd Floor  
 PO Box 30026  
 Lansing, MI 48909  
[Email lawrencem1@michigan.gov](mailto:lawrencem1@michigan.gov)  
 Phone 517 241-1640

#### 2.016 Reserved

#### 2.020 Contract Objectives/Scope/Background

##### 2.021 Background

Please see Article 1 (Section 1.0)

##### 2.022 Purpose

Please see Article 1 (Sections 1.0 and 1.1).



## 2.023 Objectives and Scope

Please see Article 1.

## 2.024 Interpretation

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

## 2.025 Form, Function and Utility

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

## 2.030 Legal Effect and Term

### 2.031 Legal Effect

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

### 2.032 Contract Term

With respect to Services, the Contract period is twenty-four months from the Effective Date of the Contract.

All outstanding Purchase Orders shall also expire upon the termination of the Contract, unless otherwise extended pursuant to the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

### 2.033 Renewal(s)

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

## 2.040 Contractor Personnel

### 2.041 Contractor Personnel

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

(b) Key Personnel

(i) In discharging its obligations under this Contract, Contractor shall provide the named Key Personnel on the terms indicated.



(ii) Reserved.

(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) Reserved.

(v) Reserved.

(c) Reserved.

(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.

(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, 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 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 performance and completion of all of the Services and Deliverables. The State will consider Contractor to be the sole point of contact with regard to all contractual matters under this Contract, including payment of any and all charges for Services and Deliverables.

(b) Contractor shall not delegate any duties under this Contract to a Subcontractor unless the Department of Management and Budget, Office of Purchasing Operations has given written consent to such delegation. The State shall have the right of prior written approval of all Subcontractors and to require Contractor to replace any Subcontractors found, in the reasonable judgment of the State, to be unacceptable. The State's request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good-faith reasons. Replacement Subcontractor(s) for the removed Subcontractor shall be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed Subcontractor, the State will agree to an equitable adjustment in schedule or other terms that may be affected by the State's required removal.

(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 material terms of this Contract and to assume toward Contractor all of the obligations and responsibilities that Contractor, by this Contract, assumes toward the State. The State reserves the right to receive copies of and review all subcontracts, although Contractor may delete or mask any proprietary information, including pricing, contained in such contracts before providing them to the State. The management of any Subcontractor will be the responsibility of Contractor, and Contractor shall remain responsible for the performance of its Subcontractors to the same extent as if Contractor had not subcontracted such performance. Contractor shall make all payments to Subcontractors or suppliers of Contractor. Except as otherwise agreed in writing by the State and Contractor, the State will not be obligated to direct payments for the Services other than to Contractor. The State's written approval of any Subcontractor engaged by Contractor to perform any obligation under this Contract shall not relieve Contractor of any obligations or performance required under this Contract.

(d) Except where specifically approved in writing by the State on a case-by-case basis, Contractor shall flow down the obligations in **Sections 2.040, 2.110, 2.150, 2.160, 2.171(c), 2.172(b), 2.180, 2.260, 2.276, 2.297** in all of its agreements with any Subcontractors.

(e) The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the Contract.

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

Contractor and the State shall each respectively be responsible for all acts and omissions of their employees, as well as the acts and omissions of any other personnel furnished by either party pursuant to this Contract or any Statement of Work.

#### 2.050 State Standards

**2.051 Reserved.**

**2.052 Reserved.**

**2.053 Reserved.**



## 2.054 Acceptable Use Policy

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

## 2.060 Deliverables

### 2.061 Ordering

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

(b) Reserved.

2.062 Reserved.

2.063 Reserved.

2.064 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 perform 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 performance of any Deliverables/Services on the scheduled due dates, if any, 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 and/or outside the control of the Contractor.

2.073 Reserved.

### 2.074 Bankruptcy

If Contractor shall file for protection under the bankruptcy laws, or if an involuntary petition shall be filed against Contractor and not removed within thirty (30) days, or if the Contractor becomes insolvent, be adjudicated



bankrupt, or if it should make a general assignment for the benefit of creditors, or if a receiver shall be appointed due to its insolvency, and Contractor and/or its affiliates are unable to provide reasonable assurances that Contractor and/or its affiliates can deliver the services provided herein, the State may, without prejudice to any other right or remedy, terminate this Contract, in whole or in part, and, at its option, may take possession of the "Work in Process" and finish such Works in Process by whatever appropriate method the State may deem expedient.

**2.075 Reserved**

**2.076 Reserved.**

2.080 Reserved

2.090 Financial

**2.091 Pricing**

(a) Pricing applicable to Services pursuant to the provisions of this Article 2 is set forth in the Consulting Statement of Work (SOW), attached to this Contract as Attachment 2.

(b) Adjustments for Reductions in Scope of Services

If the scope of the Services 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 Attachment 2, unless specifically identified in an applicable Statement of Work.

(c) Services Covered

For all Services 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 Attachment 2 – Consulting Statement of Work.

**2.092 Invoicing and Payment Procedures and Terms**

(a) Invoicing and Payment – In General

(i) The Consulting Statement of Work issued under this Contract pursuant to Article 2 includes pricing and payment information for all Services to be provided.

(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 Attachment 2. 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.

(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 for related provisions).

The State represents it 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.

(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 pricing for the Consulting Statement of Work. Accordingly, Contractor's out-of-pocket expenses are not separately reimbursable by the State unless, on a case-by-case basis for unusual expenses, the State has agreed in advance and in writing to reimburse Contractor for such an expense at the State's current travel reimbursement rates. See [http://www.mi.gov/dmb/0,1607,7-150-9141\\_13132---,00.html](http://www.mi.gov/dmb/0,1607,7-150-9141_13132---,00.html) for current rates.

(d) Reserved.

(e) Antitrust Assignment

The Contractor assigns to the State any applicable claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

(f) Final Payment

The making of final payment by the State to Contractor does not constitute a waiver by either party of any rights or other claims as to the other party's continuing obligations under the Contract, nor will it constitute a waiver of any claims by one party against the other arising from unsettled claims or failure by a party to comply with this Contract, including claims for Services and Deliverables not reasonably known until after acceptance to be defective or substandard. Contractor's acceptance of final payment by the State under this Contract shall constitute a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still unsettled.

### **2.093 State Funding Obligation**

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

### **2.094 Reserved**

### **2.095 Electronic Payment Availability**

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

## **2.100 Contract Management**

### **2.101 Contract Management Responsibility**

(a) Contractor shall have overall responsibility for managing and successfully performing and completing the Services, 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.

(b) The Services 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. 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. If required as stated in the applicable SOW shall be as follows:

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

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

(b) Meetings.

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

### 2.104 System Changes

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

### 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. 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 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 State requests or directs the Contractor to perform any services or provide deliverables that are consistent with and similar to the Services 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 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 so notify the State, then such a service or deliverable shall be governed by the Change Request procedure in this Section.

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

(a) Change Requests

(i) State Requests

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

(ii) Contractor Recommendations

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

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

(iv) By giving Contractor written notice within a reasonable time, the State shall be entitled to accept a Contractor proposal for Change, to reject it or to reach another agreement with Contractor. Should the parties agree on carrying out a Change, a written Contract Change Notice shall be prepared and issued under this Contract, describing the Change and its effects on the Services and any affected components of this Contract (a "Contract Change Notice").

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

(vi) If the State requests or directs Contractor to perform any activities that Contractor believes constitute a Change, Contractor must notify the State that it believes the requested activities are a Change prior to commencing the performance of the requested activities. If Contractor fails to so notify the State prior to commencing performance of the requested activities, such activities shall be considered to be performed gratuitously by Contractor, and Contractor shall not have any right thereafter to assert any claim for additional compensation or time for the performance of such activities. If Contractor commences performance of gratuitous services outside the scope of this Contract and subsequently elects to stop performing such out-of-scope services, Contractor must, at the request of the State, back out or reverse any changes resulting from such performance that would adversely affect the Contract.

**2.107 Reserved.**



## 2.110 Records and Inspections

### **2.111a Records and Inspections**

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

(b) **Examination of Records.** Contractor agrees that the State, including its duly authorized representatives, until the expiration of seven (7) years following performance of the applicable Services (collectively, the "Audit Period"), shall, upon twenty (20) days prior written notice, have access to and the right to examine and copy any of Contractor's books, records, documents and papers pertinent to establishing Contractor's compliance with the Contract and with applicable laws and rules, including the State's procurement rules, regulations and procedures, and actual performance of the Contract for the purpose of conducting an audit, examination, excerpt and/or transcription but the State shall not have access to any information deemed confidential to Contractor to the extent such access would require such confidential information to become publicly available. This provision also applies to the books, records, accounts, documents and papers, in print or electronic form, of any parent, affiliated or subsidiary organization of Contractor, or any Subcontractor of Contractor performing services in connection with the Contract.

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

(d) **Audit Resolution.** If necessary, the Contractor and the State shall meet to review each audit report promptly after issuance. The Contractor will respond to each audit report in writing within thirty (30) days from receipt of such report, unless a shorter response time is specified in such report. The Contractor and the State shall develop, agree upon and monitor an action plan to promptly address and resolve any deficiencies, concerns, and/or recommendations in such audit report.

### **2.111b Records and Inspections**

The Contractor agrees that the State may, upon three 3 day notice and based upon a reasonable determination of a potential material deficiency in Contractors auditing process, perform an audit at Contractor's location(s) to determine if the Contractor is complying with the requirements of the Contract. The Contractor agrees to cooperate with the State during the audit and produce all records and documentation that verifies compliance with the Contract requirements.

### **2.112 Reserved.**

## 2.120 State Responsibilities

### **2.121 State Performance Obligations**

(a) **Equipment and Other Resources.** To facilitate Contractor's performance of the Services, the State shall provide to Contractor such equipment and resources as identified in the Statements of Work or other Contract Exhibits as items to be provided by the State.

(b) **Facilities.** The State shall designate space as long as it is available and as provided in the Statement of Work, to house Contractor's personnel whom the parties agree will perform the Services at State facilities (collectively, the "State Facilities"). Contractor shall have reasonable access to, and unless agreed



otherwise by the parties in writing shall observe and comply with all rules and regulations relating to, each of the State Facilities (including hours of operation) used by Contractor in the course of providing the Services. Contractor agrees that it will not, without the prior written consent of the State, use any State Facilities or access any State information systems provided for Contractor's use, or to which Contractor otherwise gains access in the course of performing the Services, for any purpose other than providing the Services to the State.

(c) Return. Contractor shall be responsible for returning to the State any State-furnished equipment, facilities and other resources when no longer required for the Contract in the same condition as when provided by the State, reasonable wear and tear excepted.

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

### 2.130 Security

#### **2.131 Background Checks**

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

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

### 2.140 Reserved

### 2.150 Confidentiality

#### **2.151 Freedom of Information**

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

#### **2.152 Confidentiality**

Contractor and the State each acknowledge that the other possesses and will continue to possess confidential information that has been developed or received by it. As used in this Section, "Confidential Information" of Contractor shall mean all non-public proprietary information of Contractor (other than Confidential Information of the State as defined below) which is marked confidential, restricted, proprietary or with a similar designation



and as further defined with the Software Agreement. "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. Confidential Information is also afforded the protections as defined in the Software License Agreement.

### **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. Each party shall report to the other 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 Reserved.**

#### **2.162 Reserved.**

#### **2.163 Rights in Data**

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

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

#### **2.164 Ownership of Materials**

State and Contractor will continue to own their respective proprietary technologies developed before entering into the Contract. Unless otherwise agreed to in writing by the parties in a SOW, Contractor shall have the sole and exclusive right, title and ownership to any and all ideas, concepts, or other intellectual property rights related in any way to the techniques, knowledge or processes of the Contractor services and deliverables, whether or not developed for the State, with the State retaining a perpetual license for the use of said techniques, knowledge and processes developed for the State, to support its operations.



2.165 Reserved.

2.166 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

The Contractor confirms that:

- (a) It is capable in all respects of fulfilling and shall fulfill all of its obligations under this Contract. The performance of all obligations under this Contract shall be provided in a timely, professional, and workman-like manner.
- (b) Reserved.
- (c) Reserved.
- (d) Reserved.
- (e) The contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into this Contract, on behalf of Contractor.
- (f) It is qualified and registered to transact business in all locations where required.
- (g) Neither the Contractor nor any Affiliates, nor any employee of either, has, shall have, or shall acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under this Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor shall notify the State within two (2) days of any such interest that may be incompatible with the interests of the State.
- (h) Neither Contractor nor any Affiliates, nor any employee of either has accepted or shall accept anything of value based on an understanding that the actions of the Contractor or Affiliates or employee on behalf of the State would be influenced. Contractor shall not attempt to influence any State employee by the direct or indirect offer of anything of value.
- (i) Neither Contractor nor any Affiliates, nor any employee of either has paid or agreed to pay any person, other than bona fide employees and consultants working solely for Contractor or such Affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.
- (j) The prices proposed by Contractor were arrived at independently, without consultation, communication, or agreement with any other bidder for the purpose of restricting competition; the prices quoted were not knowingly disclosed by Contractor to any other bidder; and no attempt was made by Contractor to induce any other person to submit or not submit a proposal for the purpose of restricting competition.
- (k) To the best of Contractor's knowledge, all financial statements, reports, and other information furnished by Contractor to the State as part of its response to the RFP or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Contractor as of the respective dates, or for the respective periods, covered by such financial statements, reports, other information. Since the respective dates or periods covered by such financial statements, reports, or other information, there have been no material adverse change in the business, properties, financial condition, or results of operations of Contractor.
- (m) To the best of Contractor's knowledge, all written information furnished to the State by or behalf of Contractor in connection with this Contract, including its bid, is true, accurate, and complete, and contains



no untrue statement of material fact or omits any material fact necessary to make such information not misleading.

(n) It is not in material default or breach of any other contract or agreement that it may have with the State or any of its departments, commissions, boards, or agencies. Contractor further represents and warrants that it has not been a party to any contract with the State or any of its departments that was terminated by the State or such department within the previous five (5) years for the reason that Contractor failed to perform or otherwise breached an obligation of such contract.

**2.172 Reserved.**

**2.173 Reserved.**

**2.174 Reserved.**

**2.175b Services Warranty and Disclaimer.**

Contractor warrants that its services provided pursuant to the Consulting Statement of Work (Attachment 2) shall be performed consistent with generally accepted industry standards. CONTRACTOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NOR ANY OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, IN CONNECTION WITH ATTACHMENT 2 AND THE SERVICES PROVIDED THEREUNDER.

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

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

Before the Contract is signed by both parties or before the purchase order is issued by the State, the Contractor must furnish to the Director of Purchasing Operations, certificate(s) of insurance verifying insurance



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

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

1. Commercial General Liability with the following minimum coverage:

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

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

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

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

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

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

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

4. Employers liability insurance with the following minimum limits:

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



- 5. Employee Fidelity, including Computer Crimes, insurance naming the State as a loss payee, providing coverage for direct loss to the State and any legal liability of the State arising out of or related to fraudulent or dishonest acts committed by the employees of Contractor or its Subcontractors, acting alone or in collusion with others, in a minimum amount of one million dollars (\$1,000,000.00) with a maximum deductible of fifty thousand dollars (\$50,000.00).
- 6. Umbrella or Excess Liability Insurance in a minimum amount of ten million dollars (\$10,000,000.00), which shall apply, at a minimum, to the insurance required in Subsection 1 (Commercial General Liability) above.
- 7. Professional Liability (Errors and Omissions) Insurance with the following minimum coverage: three million dollars (\$3,000,000.00) each occurrence and three million dollars (\$3,000,000.00) annual aggregate.
- 8. Fire and Personal Property Insurance covering against any loss or damage to the office space used by Contractor for any reason under this Contract, and the equipment, software and other contents of such office space, including without limitation, those contents used by Contractor to provide the Services to the State, up to the replacement value thereof, where such office space and its contents are under the care, custody and control of Contractor. Such policy shall cover all risks of direct physical loss or damage, including without limitation, flood and earthquake coverage and coverage for computer hardware and software. The State shall be endorsed on the policy as a loss payee as its interests appear.

(a) 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.

(b) Certificates of Insurance and Other Requirements

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

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



## 2.190 Indemnification

### **2.191 Indemnification**

#### (a) General Indemnification

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

#### (b) Reserved.

#### (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.

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 termination 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 one times fees paid of the applicable SOW. The foregoing limitation of liability shall not apply to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor.

The State's liability for damages to the Contractor shall be limited to one times fees paid of the applicable SOW.

**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.**

### **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.

Contractor will not have the right to any payments from the State 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 Reserved.**

### **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 or applicable SOW 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 for a mutually agreeable time period for cure, 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.

Services(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 that are terminated and the State shall pay for all Services in full 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.

(b) In the event this Contract or an applicable SOW 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 or an applicable SOW 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 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 or an applicable SOW 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 that are terminated, but the State shall pay for all Services accepted by the State in full. 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 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 services or not provided by reason of such reduction.

(c) In the event the State terminates this Contract, eliminates, 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 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, except its obligations to pay for Services performed prior to such termination, 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 Reserved.**

### **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 documentation or materials 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 Software that is intended to be transferred to the State at the termination of the Contract or an applicable SOW, Contractor will transfer title in, and deliver to, the State, unless otherwise directed, all Software 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, if any, 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 software work prepared by Contractor pursuant to this Contract shall, become the Contractor's property, subject to grant of a license to the State for use of such Software work,. 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) Reserved.

### 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 or applicable SOW 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 services, to the State or a third party designated by the State. In the event of termination for convenience 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. This Plan will include termination closing costs. The Contractor, at its discretion, 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. For the avoidance of doubt, the State shall reimburse Contractor for all reasonable transition costs on a time and expense basis.

(b) Reserved.

(c) Reserved.

(d) Reserved.

(e) Payment - If the transition results from a termination for any reason, reimbursement shall be governed by the termination provisions of this Contract. If the transition results from expiration, the Contractor will be reimbursed for all reasonable transition costs (i.e. costs incurred within the agreed period after contract expiration that result from transition operations) at the rates specified by **Attachment 2**. 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;

(c) Approving, in a timely manner, Contractor's Transition Plan if such is requested by the State;

(d) Timely payment of outstanding invoices or charges, as provided by 2.218 (e).



## 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 Key Personnel, 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.

For all State claims seeking any reductions in the amounts payable to Contractor under the Contract, or the time for Contractor's performance, the State shall submit a letter executed by an authorized representative of the State 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 State believes the Contractor is liable, and (c) the supporting data provided with such an affidavit are current and complete to State's best knowledge and belief

### 2.252 Informal Dispute Resolution

(a) All operational disputes between the parties shall be resolved under the Contract Management procedures developed pursuant to **Section 2.100**. If the parties are unable to resolve any disputes after compliance with such processes, the parties shall meet with the Director of Purchasing Operations, DMB, or designee, for the purpose of attempting to resolve such dispute without the need for formal legal proceedings, as follows:

(i) The representatives of Contractor and the State shall meet as often as the parties reasonably deem necessary in order to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.

(ii) During the course of negotiations, all reasonable requests made by one party to another for non-privileged information reasonably related to the Contract will be honored in order that each of the parties may be fully advised of the other's position.

(iii) The specific format for the discussions will be left to the discretion of the designated State and Contractor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.

(iv) Following the completion of this process within sixty (60) calendar days, the Director of Purchasing Operations, DMB, or designee, shall issue a written opinion regarding the issue(s) in dispute within thirty (30) calendar days. The opinion regarding the dispute shall be considered the State's final action and the exhaustion of administrative remedies.

(b) This **Section 2.250** will not be construed to prevent either party from instituting, and a party is authorized to institute, formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or pursuant to **Section 2.253**.

(c) The State will not mediate disputes between the Contractor and any other entity, except state agencies, concerning responsibility for performance of work pursuant to the Contract.

### 2.253 Injunctive Relief

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

### 2.254 Continued Performance

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



## 2.260 Federal and State Contract Requirements

### **2.261 Nondiscrimination**

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

### **2.262 Unfair Labor Practices**

Pursuant to 1980 PA 278, MCL 423.231, *et seq.*, the State shall not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled pursuant to section 2 of the Act. The United States National Labor Relations Board compiles this information. 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 that are prevented from disclosure by the terms of the settlement may be annotated as such. Information provided to the State from Contractor's publicly filed documents referencing its material litigation will be deemed to satisfy the requirements of this Section.

(b) Assurances. In the event that any such Proceeding disclosed to the State pursuant to this Section, or of which the State otherwise becomes aware, during the term of this Contract would cause a reasonable party to be concerned about:

- (i) the ability of Contractor (or a Subcontractor hereunder) to continue to perform this Contract in accordance with its terms and conditions, or



(ii) whether Contractor (or a Subcontractor hereunder) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in such Proceeding, which conduct would constitute a breach of this Contract or a violation of Michigan law, regulations or public policy, then Contractor shall be required to provide the State all reasonable assurances requested by the State to demonstrate that:

(A) Contractor and/or its Subcontractors hereunder will be able to continue to perform this Contract and any Statements of Work in accordance with its terms and conditions, and

(B) Contractor and/or its Subcontractors hereunder have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in such Proceeding.

(c) Contractor shall make the following notifications in writing:

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

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

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

### **2.272 Governing Law**

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

### **2.273 Compliance with Laws**

The Contractor will perform the Services in a manner that complies with all applicable laws and regulations.

### **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, subject to the informal dispute resolution procedures found in Section 2.252, C Contractor consents to venue in Ingham County, Michigan. Contractor agrees to appoint agents in the State of Michigan to receive service of process.

### **2.280 Environmental Provision**

### **2.281 Reserved.**

### **2.290 General**

### **2.291 Amendments**

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

### **2.292 Assignment**

(a) Neither party shall have the right to assign the Contract, or to assign or delegate any of its duties or obligations under the Contract, to any other party (whether by operation of law or otherwise), without the prior written consent of the other party; provided, however, that the State may assign the Contract to any other State agency, department, division or department without the prior consent of Contractor and Contractor may assign the Contract to an affiliate so long as such affiliate is adequately capitalized and can provide adequate assurances that such affiliate can perform the Contract. Any purported assignment in violation of this Section shall be null and void. It is the policy of the State of Michigan to withhold consent from proposed assignments,



subcontracts, or novations when such transfer of responsibility would operate to decrease the State's likelihood of receiving performance on the Contract or the State's ability to recover damages.

(b) Contractor may not, without the prior written approval of the State, assign its right to receive payments due under the Contract. In the event of any such permitted assignment, Contractor shall not be relieved of its responsibility to perform any duty imposed upon it herein, and the requirement under the Contract that all payments shall be made to one entity shall continue.

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

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

(b) In the event of any inconsistency between the terms of the Contract and a Statement of Work, the terms of the Statement of Work will take precedence (as to that Statement of Work only); provided, however, that a Statement of Work may not modify or amend the terms of **Sections 2.110 through 2.220** of the Contract, which may be modified or amended only by a formal Contract amendment.

### **2.294 Headings**

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

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

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

### **2.296 Notices**

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

State of Michigan  
Office of Purchasing Operations  
Attention: Dale N. Reif  
PO Box 30026  
530 West Allegan  
Lansing, Michigan 48909

with a copy to:

State of Michigan  
Department of Information Technology  
Attention: Mark Lawrence  
525 West Allegan  
Constitutional Hall, Atrium-South Tower  
Lansing, Michigan 48913



And to Contractor: SAP Public Services, Inc  
3999 West Chester Pike  
Newtown Square, PA 19073  
Attn: Christopher Pfendner  
Director of Contracts

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

(b) Binding Commitments

The Contractor represents that its representative(s) executing this Contract, or any amendment thereto have the authority to make binding commitments on Contractor's behalf.

**2.297 Media Releases and Contract Distribution**

(a) Media Releases

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

(b) Contract Distribution

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

**2.298 Reformation and Severability**

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

**2.299 Consents and Approvals**

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

**2.300 No Waiver of Default**

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

**2.301 Survival**

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

**2.302 Covenant of Good Faith**

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

**2.303 Permits**

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

**2.304 Website Incorporation**

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

**2.305 Taxes**

Contractor is expected to collect and pay all applicable federal, state, and local employment taxes, including the taxes defined for all Contractor employees involved in the resulting Contract.

**2.306 Reserved.**

**2.307 Reserved.**

**2.308 Reserved.**

*2.310 Reserved*

*2.320 Reserved*

*2.330 Federal Grant Requirements*



## ATTACHMENT 1

### SOFTWARE LICENSE AGREEMENT ("Agreement")

This Agreement is made effective as of the 5th day of September, 2006, by and between SAP Public Services, Inc., a Delaware corporation, with offices at 3999 West Chester Pike, Newtown Square, PA 19073 ("SAP"), and State of Michigan, with offices at Mason Building, Lansing, MI 30026 ("Licensee" or "State").

#### 1. DEFINITIONS.

1.1 "Business Partner" means an entity that requires access to the Software in connection with the operation of Licensee's business, such as customers, distributors and suppliers.

1.2 "Documentation" means SAP's documentation which is delivered to Licensee under this Agreement, and includes written and electronic documentation of SAP software functionality delivered to licensee.

1.3 "Modification" means a change to the Software that changes the delivered source code or an enhancement to the Software that is made using SAP tools or utilizing or incorporating SAP Proprietary Information.

1.4 "Named Users" means any combination of users licensed under this Agreement.

1.5 "Proprietary Information" means: (i) with respect to SAP and SAP AG (the licensor of the SAP Proprietary Information to SAP), the Software and Documentation, any other third-party software licensed with or as part of the Software, benchmark results, manuals, program listings, data structures, flow charts, logic diagrams, functional specifications; (ii) the concepts, techniques, ideas, and know-how embodied and expressed in the Software and (iii) information reasonably identifiable as the confidential and proprietary information of SAP or Licensee or their licensors excluding any part of the SAP or Licensee Proprietary Information which: (a) is or becomes publicly available through no act or failure of the other party; or (b) was or is rightfully acquired by the other party from a source other than the disclosing party prior to receipt from the disclosing party; or (c) becomes independently available to the other party as a matter of right.

1.6 "Software" means (i) all software specified in agreed upon Appendices hereto, developed by or for SAP and/or SAP AG and delivered to Licensee hereunder; (ii) any new releases thereof made generally available pursuant to Premium Support; and (iii) any complete or partial copies of any of the foregoing.

1.7 "Subsidiary" means a corporation in the Territory of which Licensee owns more than fifty percent of the voting securities. This entity will be considered a Subsidiary for only such time as such equity interest is maintained.

1.8 "Territory" means the United States of America.

1.9 "Use" means to activate the processing capabilities of the Software, load, execute, access, employ the Software, or display information resulting from such capabilities.

#### 2. LICENSE GRANT.

##### 2.1 License.

(a) SAP grants, a non-exclusive, perpetual (unless terminated in accordance with Section 5 herein) license to Use the Software, Documentation, other SAP Proprietary Information, at specified site(s) within the Territory to run Licensee's internal business operations and to provide internal training and testing for such internal business operations and as further set forth in Appendices hereto. This license does not permit Licensee to use the SAP Proprietary Information to provide services to third parties (e.g., business process outsourcing, service bureau applications or third party training). Business Partners may have screen access to the Software solely in conjunction with Licensee's Use and may not Use the Software to run any of their business operations.

(b) Licensee agrees to install the Software only on hardware identified by Licensee pursuant to this Agreement that has been previously approved by SAP in writing or otherwise officially made known to the public as appropriate for Use or interoperation with the Software (the "Designated Unit"). Any individuals that Use the Software including employees or agents of Subsidiaries and Business Partners, must be licensed as Named Users. Use may occur by way of an interface delivered with or as a part of the Software, a Licensee or third-party interface, or another intermediary system.

2.2 Subsidiary Use. Subsidiaries may Use the Software provided that: (i) the Subsidiary agrees to be bound by the terms herein in the form of Exhibit A attached hereto; and (ii) a breach of such Exhibit by Subsidiary shall be considered a breach by Licensee hereunder.

3. VERIFICATION. SAP shall be permitted to audit (at least once annually and in accordance with SAP standard procedures) the usage of the SAP Proprietary Information. In the event an audit reveals that Licensee underpaid License and/or Premium Support Fees to SAP, Licensee shall pay such underpaid fees based on SAP's list of prices and conditions in effect at the time of the audit.

#### 4. PRICE AND PAYMENT.

4.1 License Fees. Licensee shall pay to SAP license fees for the Software and Premium Support fees on the terms in Appendices hereto. Fees for Services will be paid as set forth in the Consulting Statement of Work hereto. Any fees not paid when due shall accrue interest at the rate of 18% per annum, but not to exceed the maximum amount as allowed by law.



4.2 Taxes. Fees and other charges described in this Agreement, or in SAP's most recent list of prices and conditions, do not include federal, state or local sales, foreign withholding, use, property, excise, service, or similar taxes ("Tax(es)") now or hereafter levied, all of which shall be for Licensee's account. With respect to state/local sales tax, direct pay permits or valid tax-exempt certificates must be provided to SAP prior to the execution of this Agreement.

5. TERM.

5.1 Term. This Agreement and the license granted hereunder shall become effective as of the date first set forth above and shall continue in effect thereafter unless terminated upon the earliest to occur of the following: (i) thirty days after Licensee gives SAP written notice of Licensee's desire to terminate this Agreement, for any reason, but only after payment of all License and Premium Support Fees then due and owing; (ii) thirty days after SAP gives Licensee notice of Licensee's material breach of any provision of the Agreement (other than Licensee's breach of its obligations under Sections 6 or 10, which breach shall result in immediate termination), including more than thirty days delinquency in Licensee's payment of any money due hereunder, unless Licensee has cured such breach during such thirty day period; (iii) immediately if Licensee files for bankruptcy, becomes insolvent, or makes an assignment for the benefit of creditors.

5.2 End of Term Duties. Upon any termination hereunder, Licensee and its Subsidiaries shall immediately cease Use of all SAP Proprietary Information. Within thirty (30) days after any termination, Licensee shall deliver to SAP or destroy all copies of the SAP Proprietary Information in every form. Licensee agrees to certify in writing to SAP that it and each of its Subsidiaries has performed the foregoing. Sections 3, 4, 6, 7.2, 8, 9, 11.4, 11.5 and 11.6 shall survive such termination. In the event of any termination hereunder, Licensee shall not be entitled to any refund of any payments made by Licensee.

6. PROPRIETARY RIGHTS.

6.1 Protection of Proprietary Information Licensee shall not copy, translate, disassemble, or decompile, nor create or attempt to create, by reverse engineering or otherwise, the source code from the object code of the Software. Except for the rights set forth below, Licensee is not permitted to make derivative works of the Software and ownership of any unauthorized derivative works shall vest in SAP. SAP and Licensee agree to take all reasonable steps and the same protective precautions to protect the Proprietary Information from disclosure to third parties as with its own proprietary and confidential information. Neither party shall, without the other party's prior written consent, disclose any of the Proprietary Information of the other party to any person, except to its bona fide individuals whose access is necessary to enable such party to exercise its rights hereunder. Each party agrees that prior to disclosing any Proprietary Information of the other party to any third party, it will obtain from that third party a written acknowledgment that such third party will be bound by the same terms as specified in this Section 6 with respect to the Proprietary Information.

6.2 Modifications.

Licensee may make Modifications to the Software, and shall be permitted to use Modifications with the Software in accordance with this Agreement. Licensee shall comply with SAP's registration procedure prior to making changes to the source code. All Modifications and all rights associated therewith shall be the exclusive property of SAP and SAP AG. Licensee agrees to execute those documents reasonably necessary to secure SAP's rights in the foregoing. SAP retains the right to independently develop enhancements to the Software and Licensee agrees not to take any action that would limit SAP's sale, assignment, licensing or use of its own Software or Modifications or enhancements thereto.

7. PERFORMANCE WARRANTY.

7.1 Warranty. SAP warrants that the Software will substantially conform to the functional specifications contained in the Documentation for six months following delivery. The warranty shall not apply: (i) if the Software is not used in accordance with the Documentation; or (ii) if the defect is caused by a Modification, Licensee, third-party software, or third party database. SAP does not warrant that the Software will operate uninterrupted or that it will be free from minor defects or errors that do not materially affect such performance, or that the applications contained in the Software are designed to meet all of Licensee's business requirements.

7.2 Express Disclaimer. SAP AND ITS LICENSORS DISCLAIM ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE EXCEPT TO THE EXTENT THAT ANY WARRANTIES IMPLIED BY LAW CANNOT BE VALIDLY WAIVED.

8. INDEMNIFICATION.

8.1 Indemnification of Licensee. SAP shall indemnify Licensee against all claims, liabilities, and costs, including reasonable attorneys' fees, reasonably incurred in the defense of any claim brought against Licensee in the Territory by third parties alleging that Licensee's Use of the Software and Documentation infringes or misappropriates any United States patent of which SAP is aware; a copyright; or trade secret rights, provided that: such indemnity shall not apply if the alleged infringement results from Use of the Software in conjunction with any other software, an apparatus other than a Designated Unit, or unlicensed activities and so long as Licensee promptly notifies SAP in writing of any such claim and SAP is permitted to control fully the defense and any settlement of such claim as long as such settlement shall not include a financial obligation on Licensee. Licensee shall cooperate fully in the defense of such claim and may appear, at its own expense, through counsel reasonably acceptable to SAP. SAP may settle any claim on a basis requiring SAP to substitute for the Software and Documentation alternative substantially equivalent non-infringing programs and supporting documentation. Licensee shall not undertake any action in response to any infringement or alleged infringement of the Software and Documentation.

8.2 THE PROVISIONS OF THIS SECTION 8 STATE THE SOLE, EXCLUSIVE, AND ENTIRE LIABILITY OF SAP AND ITS LICENSORS TO LICENSEE, AND IS LICENSEE'S SOLE REMEDY, WITH RESPECT TO THE INFRINGEMENT OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS.

9. LIMITATIONS OF LIABILITY.

9.1 Licensee's Remedies. Licensee's sole and exclusive remedies for any damages or loss in any way connected with the Software or Services furnished by SAP and its licensors, whether due to SAP's negligence or breach of any other duty, shall be, at SAP's option: (i) to bring the performance of the Software into substantial compliance with the functional specifications; (ii) re-performance of Services; or (iii) return of an appropriate portion of any payment made by Licensee with respect to the applicable portion of the Software or Services.

9.2 Not Responsible. SAP will not be responsible under this Agreement (i) if the Software is not used in accordance with the Documentation; or (ii) if the defect is caused by Licensee, a Modification, third-party software, or third party database. SAP AND ITS LICENSORS SHALL NOT BE LIABLE FOR ANY CLAIMS OR DAMAGES ARISING FROM INHERENTLY DANGEROUS USE OF THE SOFTWARE AND/OR THIRD-PARTY SOFTWARE LICENSED HEREUNDER.



9.3 Limitation of Liability. ANYTHING TO THE CONTRARY HEREIN NOTWITHSTANDING, EXCEPT FOR DAMAGES RESULTING FROM UNAUTHORIZED USE OR DISCLOSURE OF PROPRIETARY INFORMATION, UNDER NO CIRCUMSTANCES SHALL SAP, ITS LICENSORS OR LICENSEE BE LIABLE TO EACH OTHER OR ANY OTHER PERSON OR ENTITY FOR AN AMOUNT OF DAMAGES IN EXCESS OF THE PAID LICENSE FEES OR BE LIABLE IN ANY AMOUNT FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES, LOSS OF GOOD WILL OR BUSINESS PROFITS, WORK STOPPAGE, DATA LOSS, COMPUTER FAILURE OR MALFUNCTION, OR EXEMPLARY OR PUNITIVE DAMAGES.

9.4 Severability of Actions. IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT EACH AND EVERY PROVISION OF THIS AGREEMENT WHICH PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS INTENDED BY THE PARTIES TO BE SEVERABLE AND INDEPENDENT OF ANY OTHER PROVISION AND TO BE ENFORCED AS SUCH.

10. ASSIGNMENT. Licensee may not, without SAP's prior written consent, assign, delegate, pledge, or otherwise transfer this Agreement, or any of its rights or obligations under this Agreement, or the SAP Proprietary Information, to any party, whether voluntarily or by operation of law, including by way of sale of assets, merger or consolidation. SAP may assign this Agreement to its affiliates.

#### 11. ESCROW OF SOURCE CODE.

1. SAP warrants that the source code for the Software, together with related Documentation as it is or becomes available, has been deposited in an escrow account maintained by a third party provider (the "Escrow Agent"), pursuant to an agreement between the Escrow Agent and SAP, (the "Escrow Agreement").

2. SAP will from time to time deposit into the escrow account copies of source code for Releases and Versions of the Software and related Documentation.

3. SAP or SAP's trustee in bankruptcy shall authorize the Escrow Agent to make and release a copy of the applicable deposited materials to Licensee upon the occurrence of any of the following events:

(a) The existence of any one or more of the following circumstances, uncorrected for more than thirty (30) days: entry of an order for relief under Title 11 of the United States Code; the making by SAP of a general assignment for the benefit of creditors; the appointment of a general receiver or trustee in bankruptcy of SAP's business or property; or action by SAP under any state insolvency or similar law for the purpose of its bankruptcy, reorganization, or liquidation; unless within the specified thirty (30) day period, SAP (including its receiver or trustee in bankruptcy) provides to Licensee adequate assurances, reasonably acceptable to Licensee, of its continuing ability and willingness to fulfill its maintenance obligations under this Agreement;

(b) SAP has ceased its on-going business operations or that portion of its business operations relating to the sale, licensing and maintenance of the Software; or

(c) Failure of SAP to carry out the material maintenance obligations imposed on it pursuant to this Agreement after reasonable opportunity has been provided to SAP and SAP AG to perform such obligations.

4. In no event shall Licensee have the right to access the applicable deposited materials if SAP AG agrees to assume SAP's maintenance obligations under this Agreement.

5. In the event of release under this Agreement, Licensee agrees that it will treat and preserve the deposited materials as a trade secret of SAP AG in accordance with the same precautions adopted by Licensee to safeguard its own trade secrets against unauthorized use and disclosure and in all cases at least with a reasonable degree of care. Release under this provision shall not extend Licensee any greater rights or lesser obligations than are otherwise provided or imposed under this Agreement. This provision shall survive any termination of this Agreement.

#### 12. GENERAL PROVISIONS.

12.1 Severability. It is the intent of the parties that in case any one or more of the provisions contained in this Agreement shall be held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect the other provisions of this Agreement, and this Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.

12.2 No Waiver. If either party should waive any breach of any provision of this Agreement, it shall not thereby be deemed to have waived any preceding or succeeding breach of the same or any other provision hereof.

12.3 Counterparts. This Agreement may be signed in two counterparts, each of which shall be deemed an original and which shall together constitute one Agreement.

12.4 Export Control Notice. The Software, Documentation and Proprietary Information are being released or transferred to Licensee in the United States and are therefore subject to the U.S. export control laws. Licensee acknowledges its obligation to ensure that its exports from the United States are in compliance with the U.S. export control laws. Licensee shall also be responsible for complying with all applicable governmental regulations of any foreign countries with respect to the use of the Proprietary Information by its Subsidiaries outside of the United States. Licensee agrees that it will not submit the Software to any government agency for licensing consideration or other regulatory approval without the prior written consent of SAP.

12.5 Confidential Terms and Conditions. Licensee shall not disclose the terms and conditions of this Agreement or the pricing contained therein to any third party. Neither party shall use the name of the other party in publicity, advertising, or similar activity, without the prior written consent of the other, except that Licensee agrees that SAP may use Licensee's name in customer listings or as part of SAP's marketing efforts.

12.6 Governing Law. This Agreement shall be governed by and construed under State of Michigan law without reference to its conflicts of law principles. In the event of any conflicts between foreign law, rules, and regulations, and United States of America law, rules, and regulations, United States of America law, rules, and regulations shall prevail and govern. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this agreement. The Uniform Computer Information Transactions Act as enacted shall not apply.

12.7 Notices. All notices or reports which are required or may be given pursuant to this Agreement shall be in writing and shall be deemed duly given when delivered to the respective executive offices of SAP and Licensee at the addresses first set forth above.

12.8 Force Majeure. Any delay or nonperformance of any provision of this Agreement (other than for the payment of amounts due hereunder) caused by conditions beyond the reasonable control of the performing party shall not constitute a breach of this Agreement, and the time for performance of such provision, if any, shall be deemed to be extended for a period equal to the duration of the conditions preventing performance.

12.9 Entire Agreement. This Agreement and each Schedule and Appendix hereto constitute the complete and exclusive statement of the agreement between SAP and Licensee, and all previous representations, discussions, and writings are merged in, and superseded by, this Agreement. This Agreement may be modified only by a writing signed by both parties. This Agreement and each Appendix hereto shall prevail over any additional, conflicting, or inconsistent terms and conditions which may appear on any purchase order or other document furnished by Licensee to SAP. The following documents comprise the SAP commercial documents of this Agreement:

CONTRACT NO. \_\_\_\_\_

ATTACHMENT 1, Software License Agreement ("Agreement")  
Exhibit A to Attachment 1, Subsidiary Use Agreement  
Schedule to Attachment 1, Premium Support Schedule

Appendix 1 to Attachment 1, SAP Software Appendix  
Appendix 2 to Attachment 1, RWD Software Appendix  
Appendix 3 to Attachment 1, SAP Preferred Card

ATTACHMENT 2, Consulting Statement of Work  
Project 1  
Project 2

IN WITNESS WHEREOF, the undersigned, intending to be legally bound, have duly executed this Agreement to become effective as of the date first above written.

**SAP Public Services, Inc.**  
(SAP)

**State of Michigan**  
(Licensee)

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

EXHIBIT A to ATTACHMENT 1

SUBSIDIARY USE AGREEMENT

This Subsidiary Use Agreement is made effective as of the \_\_\_\_ day of \_\_\_\_\_, 200\_ between SAP \_\_\_\_\_, Inc., a Delaware Corporation, with offices at 3999 West Chester Pike, Newtown Square, PA 19073 ("SAP") and \_\_\_\_\_ a \_\_\_\_\_ corporation, with offices at \_\_\_\_\_ ("Subsidiary").

1. Subsidiary is entitled to have Named Users Use the Software on the Designated Unit(s) identified in the SAP \_\_\_\_\_, Inc. / \_\_\_\_\_ Software End-User License Agreement ("Agreement").
2. Subsidiary agrees to abide by and be bound by all of the terms and conditions of the Agreement applicable to Subsidiary and applicable to Licensee. SAP may directly enforce all such terms and conditions against it directly.
3. Subsidiary agrees that its right to Use SAP Software and receive Premium Support services shall be governed solely by the Agreement. In the event that the Agreement is terminated, this Subsidiary Use Agreement is terminated or if Subsidiary ceases to meet the definition of "Subsidiary" therein, Subsidiary agrees that all of its rights to the Software will cease effective as of the termination date.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound, have duly executed this Subsidiary Use Agreement.

SAP Public Services, Inc.  
(SAP)

\_\_\_\_\_  
(Subsidiary)

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## PREMIUM SUPPORT SCHEDULE ("Schedule")

to

### ATTACHMENT 1

This Schedule is hereby annexed to and made a part of the Agreement specified above. In each instance in which provisions of this Schedule contradict or are inconsistent with the provisions of the Agreement, the provisions of this Schedule shall prevail and govern.

Licensee may request and SAP shall provide, to such degree as SAP makes such services generally available in the Territory, premium support services for the Software ("Premium Support"). Premium Support currently includes the delivery of new releases of the Software and Software correction packages, support via telephone, remote support/update, Service Level Agreement, SAP Premium Support Advisor, Assessment Services, Proactive Remote Services, Early Watch Alert and SAP's support portal. In order to receive Premium Support, Licensee must make all required remote support and update connections to each Designated Unit as requested by SAP. In the event SAP licenses third party software to Licensee under the Agreement, SAP shall provide Premium Support on such third party products to the degree the applicable third party makes such Premium Support services available to SAP.

#### 1. **SAP Premium Support Services.** SAP Premium Support Services include the following:

**1.1 Service Level Agreement.** The following Service Level Agreement ("SLA") commitments shall be offered commencing in the first full Calendar Quarter following the completion of Licensee's implementation of the recommendations resulting from the Initial Assessment specified in Section 1.3 below. As used herein, "Calendar Quarter" is the three month period ending on March 31, June 30, September 30 and December 31 respectively of any given calendar year.

##### 1.1.1 SLA for Initial Response Times:

a. **Priority 1 Support Messages ("Very High").** SAP shall respond to Priority 1 support messages (currently defined as production system shut-down or severe restrictions in the SAP productive system that prevent productive work) within one (1) hour of SAP's receipt (twenty-four hours a day, seven days a week) of such Priority 1 support messages.

b. **Priority 2 Support Messages ("High").** SAP shall respond to Priority 2 support messages (currently defined as severe loss of functionality, significant restrictions in the SAP productive system) within four (4) hours of SAP's receipt (during SAP's normal business hours (in the region Licensee is located) Monday-Friday, excluding United States and German legal and public holidays) of such Priority 2 support messages.

c. For further information on assigning priority levels see SAP Note 67739 available in the SAP Notes Database on the SAP Service Marketplace via [www.service.sap.com/support](http://www.service.sap.com/support).

**1.1.2 SLA for Corrective Action Response Time for Priority 1 Support Messages:** SAP shall provide a solution, work around or action plan for resolution ("Corrective Action") of Licensee's Priority 1 support message within four (4) hours of SAP's receipt (twenty-four hours a day, seven days a week) of such Priority 1 support messages. In the event an action plan is submitted to Licensee as a Corrective Action, such action plan shall include: (i) status of the error resolution process; (ii) planned next steps, including identifying responsible SAP resources; (iii) required Licensee actions to support error resolution process; (iv) to the extent possible, due dates for SAP's actions; and (v) date and time for next status update from SAP. Subsequent status updates shall include a summary of the actions undertaken so far; planned next steps; and date and time for next status update. The time for Corrective Action refers only to that part of the processing time when the support message is in the status "in-process" at SAP.

**1.1.3 Service Level Credit.** SAP shall have met the stated SLAs provided SAP reacts within the stated time frames in ninety-five percent (95%) or greater of the aggregate cases for all SLAs within a Calendar Quarter. In the event Licensee submits less than twenty (20) messages (in the aggregate for all SLAs) subject to the above stated SLAs in any Calendar Quarter during the Premium Support Services term, Licensee agrees that SAP shall be deemed to have met the stated SLA provided it does not exceed the stated SLA time-frame in more than one support message during the applicable Calendar Quarter. In the event Licensee claims in writing to SAP that SAP failed to meet the stated SLAs as measured in accordance with this Section 1.1.3, SAP shall investigate such claim and provide a written report of SLA performance during the applicable Calendar Quarter. Should the report show that SAP failed to meet the stated SLAs as measured in accordance with this Section 1.1.3, SAP shall apply a Service Level Credit ("SLC") to Licensee's next Premium Support Service Fee invoice equal to forty-five one-hundredths percent (.45%) of Licensee's Premium Support Service Fee for the applicable Calendar Quarter for each failure reported and demonstrated in accordance with this Section 1.1.3, , subject to a maximum SLC cap per Calendar Quarter of eleven percent (11%) of Licensee's Premium Support Service Fee for such Calendar Quarter. In order to be considered for SLC hereunder, Licensee must notify SAP in writing of the alleged failure to meet the SLAs within thirty (30) days of the close of the applicable Calendar Quarter. The SLC stated in this Section 1.1.3 is Licensee's sole and exclusive remedy with respect to any alleged or actual failure of SAP to achieve any applicable SLA. Licensee shall provide reasonable assistance to SAP in its effort to correct any problems or processes inhibiting SAP's ability to achieve the SLA.

**1.1.4** In the event Licensee's productive use of the Software or the Priority 1 message is not closed or the Priority 1 message status is not lowered within two (2) business days (Monday-Friday, excluding United States and German legal or public holidays), SAP reserves the right, in SAP's sole judgment, to provide additional support at Licensee's site where the Designated Unit is located for the purpose of restoring productive use of the Software. The parties shall agree in writing as to the scope and duration of the on-site support on a case-by-case basis. The additional on-site support shall in no case extend past the time when Licensee resumes productive use of the Software and shall not depend on closure of the Priority 1 message or the lowering of its status to a lower priority level.

**1.1.5** Licensee shall submit such support messages via the SAP Solution Manager Software in accordance with SAP's then current support message processing log-in procedure which contain the relevant details necessary (as specified in SAP Note 16018 or any future SAP Note which replaces SAP Note 16018) for SAP to take action on the reported error related to an identified Licensee productive installation of SAP Software. Licensee must provide reproducible errors in order for SAP to provide the SLAs specified herein. The SLAs specified herein shall not apply to: (i) support messages related to SAP Software products that are in shipment status "restricted shipment" as identified in SAP's Release Strategy published on the SAP Service Marketplace; (ii) support messages related to SAP Software products that are in a support status of "Customer Specific Maintenance"; (iii) support message for a release, version and/or functionality of SAP Software developed specifically for Licensee, e.g. by SAP Custom Development and/or by an SAP AG subsidiary; (iv) support messages regarding country versions that are not part of the SAP standard software and instead are realized as partner add-ons, enhancements, or modifications (even if these country versions were created by SAP or an associated organization); (v) the root-cause of the reported error is functionality not covered in the Documentation and not an error in the SAP Software; and (vi) submitted error messages that have been assigned to remote consulting.



**1.2 SAP Premium Support Advisor.** SAP shall designate one (1) resource in the SAP Active Global Support (“AGS”) Organization at one of SAP’s support centers to be Licensee’s support contact person. Upon request from Licensee, this Support Advisor shall be responsible for: (i) planning, coordinating and delivering (in cooperation with Licensee) the Assessments described in Section 1.3 below; (ii) advising Licensee on the implementation of recommended actions resulting from delivery of SAP support services; (iii) periodic follow-up with the Licensee with respect to mutually agreed actions resulting from the Assessments; (iv) acting as an additional escalation contact for exception handling in the support process; (v) providing information regarding SAP products, strategy, news and best practices as related to support and operational issues; and (vi) facilitating Licensee’s certification of the Customer Competence Center. The designated SAP Support Advisor shall be available via telephone and email during normal business hours in a time zone mutually agreed to by the parties. Normal business hours are 8:30 am to 5:30 pm local time, Monday through Friday unless otherwise agreed to in writing by the parties. SAP shall make available a substitute Support Advisor during any periods where the primary Support Advisor is unavailable. All Services of the designated SAP Support Advisor shall be coordinated with Licensee’s designated Premium Support Program Manager, as described in Section 2 below.

**1.3 Assessment Services.** Licensee and SAP agree to jointly conduct an initial assessment (“SAP Premium Support Setup Service”) and thereafter one (1) assessment per calendar year during the Premium Support Services term (“Annual Assessment”). The focus of the SAP Premium Support Setup Service may include: (i) securing remote connectivity between Licensee and SAP; (ii) explaining best practices for collaboration with SAP Active Global Support Organization; (iii) reviewing Licensee solution landscape for SLA readiness; (iv) review of Licensee project roadmap; and (v) initiating Licensee’s use of SAP Solution Manager. Thereafter, the Annual Assessments shall be a review of Licensee’s solution landscape and priorities as may be mutually agreed by the parties. Such Annual Assessments may address the following areas: (i) technical risk analysis of a planned SAP solution (system landscape and core business processes) and plan for SAP related implementation projects; (ii) software operational readiness or software operational optimization assessment and plan for supporting a new SAP solution; and (iii) SAP Solution Optimization Assessment for a productive SAP solution (including potential landscape optimization possibilities). The output of such Assessments shall be a summary service report which may include findings, risks or issues identified, and corresponding recommendations. Such Assessments shall be scheduled for delivery at dates and times mutually agreed to by the parties. Licensee is responsible for making the necessary internal arrangements for the delivery out of the Assessment Services hereunder on a non-interference basis. Licensee agrees to provide appropriate resources, including but not limited to equipment, data, information, workspace and appropriate and cooperative personnel, to facilitate the performance of the Assessment Services hereunder.

**1.4 Proactive Remote Services:** Premium Support currently includes a choice of one of the following services per live installation per year:

- A. One GoingLive Check for any new Software or other SAP application implementation;
- B. One GoingLive Upgrade Check for an upgrade to a higher functional release (e.g. from R/3 4.0 to 4.6); or
- C. One GoingLive OS/DB Migration Check. This OS/DB Migration Check assists the Licensee in preparing for a migration of an operating system or database. Migration is the responsibility of the Licensee.

In addition to these options, Premium Support currently includes up to two EarlyWatch Sessions per live SAP installation for the continual optimization of Licensee’s already live system.

To schedule GoingLive Check, GoingLive OS/DB Migration Check, or EarlyWatch Sessions, Licensee must contact Americas Customer Premium Supports at 800-677-7271 or internationally at 610-355-6821 and choose option 6. To assist Licensee in this, SAP has established the following scheduling pre-requisites:

- A. The Licensee must provide remote access to its productive system.
- B. To receive the GoingLive Check or GoingLive Upgrade Check Licensee must inform SAP at least three months prior to your go live or upgrade date.
- C. To receive the EarlyWatch Sessions, SAP requests a minimum of three months advanced notification. In addition, Licensee must send the EarlyWatch Alert data to SAP on at least a monthly basis and cooperate with SAP in reviewing the data and determining the proper deployment of the EarlyWatch Sessions based on the EarlyWatch Alert data.
- D. To receive the GoingLive OS/DB Migration Check, Licensee must comply with all of the then current pre-Check requirements. These requirements currently include hiring a certified OS/DB migration consultant, proper testing, installation of tools, and advance scheduling. Contact your local SAP Customer Support Representative for more information.

Further information and detail about individual SAP services can be found on SAPNet site (<http://www.service.sap.com/support>).

**FAILURE TO UTILIZE THE PREMIUM SUPPORT SERVICES PROVIDED BY SAP MAY PREVENT SAP FROM BEING ABLE TO IDENTIFY AND ASSIST IN THE CORRECTION OF POTENTIAL PROBLEMS WHICH, IN TURN, COULD RESULT IN UNSATISFACTORY SOFTWARE PERFORMANCE.**

## **2. Licensee Requirements for SAP Premium Support Services.**

**2.1 SAP Premium Support Services Program Management.** Licensee shall designate an English speaking Premium Support Program Manager. Such Premium Support Program Manager shall cooperate with the designated SAP Support Advisor to administer the terms of this Schedule. Licensee’s designated Premium Support Program Manager shall be Licensee’s authorized representative empowered to make necessary decisions for Licensee or bring about such decision without undue delay.

### **2.2 Other Requirements.**

2.2.1 In order to receive Premium Support Services hereunder, Licensee must: (i) continue to pay all Premium Support Service Fees for the Software licensed under and in accordance with the Agreement; (ii) otherwise fulfill its obligations under the Agreement and this Schedule; (iii) have installed, configured and be using the then current release of SAP Solution Manager Software system or (available in accord with SAP Premium Support Services), with the latest patch levels for Basis, ABAP, and the latest SAP Solution Manager Software support packages, as the Service delivery platform for documenting top issues, core business processes and critical system information for the SAP Software products for which Licensee is receiving standard support services; (iv) document all core business processes and system landscapes in the SAP Solution Manager Software system; (v) activate SAP EarlyWatch Alert for all SAP Software for which Licensee receives support services; and (vi) inform SAP of planned changes to Licensee’s system landscape.

2.2.2 Licensee agrees to promptly disclose to SAP and maintain adequate and current records of all Modifications and, if needed to provide Premium Support Services, provide such records to SAP.



2.2.3 Premium Support from SAP for the Software licensed hereunder is limited to the following site(s): Lansing and Dimondale, MI.

2.2.4. Licensee agrees to establish and maintain Customer Competency Center(s) ("CCC") at the site(s) specified above within twelve months of the Effective Date of this Schedule. Each CCC must maintain an internal Help Desk to provide first level support to Licensee's Named Users. Such internal Help Desk(s) must be staffed with a sufficient number of support consultants trained in the support and administration of the SAP Software during Licensee's normal working hours, but no less than eight hours a day, five days a week. All Named Users may have access to SAP's support portal however, only Licensee CCC employees are authorized to contact SAP after attempting to resolve the matter. Each CCC shall coordinate Licensee's Modification notification and disclosure requirements and shall coordinate Licensee's development requests. Licensee's CCC is responsible for the administration and management of the requirements specified in the Agreement including, but not limited to, performing periodic self audits to ensure Licensee's compliance with the license grant, maintaining master and installation data and managing the release order process. In the event Licensee does not establish and maintain CCC(s) in accordance with the above, SAP reserves the right to increase Licensee's then current Premium Support percentage factor then in effect.

2.2.5 Premium Support Fees shall be paid annually in advance and shall be specified in Appendices to the Agreement. In addition, Licensee shall be invoiced an annual fee of USD 1,500 for up to three designated SAP compliant remote connections. Premium Support Services offered by SAP may be changed annually by SAP at any time upon three months prior written notice. After Year 2, the Premium Support Fees and any limitations on increases are subject to Licensee's compliance with the CCC requirements specified above. Licensee is required to certify their CCC in accordance with SAP's CCC certification program. Certification may be subject to future requirements. Contact your account team for further details on this program.

3. **References and Publicity.** Licensee agrees to provide telephone references for prospective SAP customers. Licensee also agrees to provide press testimonials, releases and announcements at SAP's request.
4. **Term and Termination.** The term of the Premium Support Services specified herein shall be as specified in Appendices hereto ("Initial Term"). Following the expiration of the Initial Term, this Schedule shall automatically renew for additional one (1) year terms unless terminated by either party upon ninety (90) days written notice prior to the anniversary date of this Schedule. Premium Support Services offered by SAP may be changed annually after the Initial Term by SAP at any time upon three (3) months prior written notice. Notwithstanding the forgoing, SAP may terminate Premium Support Services after thirty (30) days written notice of: (i) Licensee's failure to pay Premium Support Services Fees hereunder or Maintenance Fees under the Agreement; or (ii) other Licensee breach unless cured within such thirty (30) day period. In the event of termination hereunder, Licensee shall be entitled to a prorata refund of any prepaid Premium Support Service Fees for the period in which such termination occurred.

In the event Licensee elects not to commence Premium Support upon the first day of the month following initial delivery of the Software, or Premium Support is otherwise declined for some period of time, and is subsequently requested or reinstated, SAP will invoice Licensee the accrued Premium Support Fees associated with such time period plus a reinstatement fee.

**Appendix 1**  
**effective September 5, 2006 (“Appendix”)**  
**to**  
**ATTACHMENT 1 (“the Agreement”)**

This Appendix is hereby annexed to and made a part of the Agreement specified above. In each instance in which provisions of this Appendix contradict or are inconsistent with the provisions of the Agreement, the provisions of this Appendix shall prevail and govern.

**1. NAMED USER DEFINITIONS:**

- 1.1 “SAP Application Professional User” is a Named User who performs operational related roles supported by the Software and includes the rights granted under the Employee User.
- 1.2 “SAP Application Limited Professional User” is a Named User who is an employee of Business Partners performing limited operational roles supported by the Software. The total number of Limited Professional Users may not exceed fifteen percent (15%) of the total number of Professional Users licensed under the Agreement.
- 1.3 “SAP Application Employee User” is a Named User, and provided such is licensed to Use the SAP ERP Package, authorized to access the licensed software solely for the purpose of executing the following transactions: (1) desktop procurement self-services, (2) Travel planning and expense reporting, (3) talent management self-services including employee appraisals, employee development plans, employee training registration, employee opportunity inquiry and response, (4) read-only analytics. Each Employee User includes the rights granted under the ESS User and shall access the software solely for such individual's own purposes and not for or on behalf of other individuals.
- 1.4 “SAP Application Employee Self Service (ESS) User” is a Named User, and provided such is licensed to Use the SAP ERP Package, authorized to access the licensed software solely for the purpose of executing the following HR self-services transactions: (1) employee records maintenance, (2) employee time and attendance entry, (3) employee directory. Each Employee Self Service (ESS) User shall access the software solely for such individual's own purposes and not for or on behalf of other individuals.
- 1.5 “SAP Application Developer User” is a Named User who uses development and administration tools provided with the Software for the purpose of modifying, deploying and managing SAP Software. The Developer User (1) does include the rights granted under the Employee User and (2) does not include the rights granted under the (a) Professional User and/or (b) Limited Professional User.

**2. LICENSED SOFTWARE:** The Software licensed to Licensee pursuant to this Appendix consists of the components identified below and specified as being licensed (“Software”). Only individuals licensed as Named Users hereunder are permitted to Use the SAP Software and third party Software licensed herein (including optional Software). Such Use shall be in accordance with their respective Named User type and in accordance with identified licensed Level. At SAP's request, Licensee shall deliver to SAP a report, as defined by SAP, evidencing Licensee's usage of the Software. SAP agrees that the initial request for such report will occur twenty-four (24) months following the effective date of the Agreement or twelve (12) months following the effective date of this Appendix, whichever occurs first, and will continue annually thereafter.

Licensed SAP Software may utilize limited functionality of other SAP Software products. Unless Licensee has expressly licensed (under this or a separate Appendix) the other SAP software utilized by the licensed SAP Software, Licensee's Use of such other SAP Software is limited to access by and through the other SAP Software for the sole purpose of enabling performance of the licensed SAP Software.

There are no applicable country/language specific versions licensed by Licensee from SAP hereunder. In the event Licensee Uses the SAP Software to build and/or operate a custom developed or third party application, additional license fees may be required.

**2.1.1 SAP APPLICATION:**

**Total Number of Named Users Licensed:**

	<u>SAP Application Professional</u> <sup>(1)</sup>	<u>SAP Application Limited Professional</u>	<u>SAP Application Employee</u>	<u>SAP Application Employee Self Service (ESS)</u>	<u>SAP Application Developer</u>
<b>SAP Named Users</b>	<b>300</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>12</b>

(1) Minimum of ten SAP Application Professional Users required. The total number of Users Licensed includes the 5 Professional User licenses that are included with the ERP Package in 2.1.2 below.

**2.1.2 SAP GENERIC APPLICATION PACKAGES:**

<b>ERP PACKAGE LICENSED</b> <sup>(1)</sup>	<u>Yes</u>	<u>No</u>
	<b>X</b>	

(1) Required to be licensed for all Software listed below except Software identified with an “\*”.



**2.2 OPTIONAL CROSS INDUSTRY SOFTWARE LICENSED: None Licensed**

**2.3 OPTIONAL INDUSTRY SOFTWARE LICENSED:**

**Public Sector Packages:**

“X” if Licensed	Industry Software	License Metric	Licensed Level
X	SAP Tax and Revenue Management for Public Sector	Number of Business Partners	850,000

**SAP NetWeaver:**

“X” if Licensed	Industry Software	License Metric	Licensed Level
X	Exchange Infrastructure (XI) Base Engine <sup>(1)</sup>	Number of Gigabyte’s per Month	up to 50,000

(1) Exchange Infrastructure Base Engine includes use of the following Standard Technical Protocol Adapters: SAP NetWeaver Adapter for IDOCs, RFCs, File/FTP, Http(s), SOAP, JMS, JDBC, Mail Protocols (pop,imap,smtp), SAP BC Protocol to connect Software, and to non-SAP applications. Additional types of adapters are available for additional license fees.

**2.4 OPTIONAL SUPPLEMENTARY SOFTWARE LICENSED:**

“X” if Licensed	Supplementary Products	License Metric	Licensed Level
X	Backend Application Adapters (II)	Per installation and connected system	
		X Siebel Adapter by iWay	1
X	Interactive Forms Based On Adobe	Number of Internal Users Number of External Users Number of Interactive Form Templates	up to 2,000 Unlimited up to 30

**2.5 DATABASE INTERFACE:   X**

**2.6 BUSINESS CONNECTOR:** The SAP Software licensed under item 2.1 above includes the right to Use the SAP Business Connector that is downloadable by Licensee from SAP’s applicable website. Use of the Business Connector is only permitted for connecting to SAP Software components and is not permitted for communications between one or more systems not operating the Software.

**3. LICENSE FEE AND PAYMENT:** The total Net License Fee to Licensee for the Software specified above is USD 947,850, which shall be invoiced on or before September 30, 2006, and is payable net forty-five (45) days from date of invoice.

**4. INSTALLATION:** For Software to be installed on a specific Licensee or Affiliate Designated Unit within the Territory, Licensee shall provide SAP with written notice of the type/model and serial number and location of each Designated Unit and the number of Users allocated to each such Designated Unit prior to such installation. Such notice shall be in a form materially similar to Schedule 1 attached hereto and is to be sent to: SAP Contracts Department, Attention: Director of Contracts, 3999 West Chester Pike, Newtown Square, PA 19073

**5. DELIVERY:** Delivery of the above-specified Software and Documentation is estimated to take place in September, 2006. Physical delivery will be free on board shipping point to the Licensee at the following location: State of Michigan, Department of Treasury, Operations Center, 2SW Room 256, 7285 Parsons Drive, Dimondale, MI 48821.

**6. PREMIUM SUPPORT SERVICE AND PAYMENT:** Premium Support at the site(s) specified in the Premium Support Schedule to the Agreement shall commence as of the first day of the month following initial delivery of the Software. The current annual Premium Support Service Fee for the Software licensed under this Appendix is as follows:

Effective Date through September 30, 2011: USD 208,527 (22% of the Net License Fee of USD 947,850). Amount will be prorated for any partial periods.

October 1, 2011 and Beyond: Priced at SAP’s then current factor in effect for all customers.



Other than as specified above, Premium Support Service Fees are subject to change once during a calendar year upon ninety (90) days notice to Licensee. Premium Support Service Fees do not include federal, state or local taxes. Premium Support Service Fees are invoiced on an annual basis effective January 1 of a calendar year and payable Net forty-five (45) days from date of invoice. Any Premium Support Service Fees due prior to January 1 are invoiced on a pro-rata basis for the given calendar year in effect.

**7. THIRD-PARTY DATABASE:**

The Software licensed hereunder requires a third party database product which has either been integrated or pre-installed as part of the Software, or which must be installed to Use the Software. Third party database product functionality as integrated in the Software may differ from a non-integrated third party database product. Each third party database product is subject to its respective third party vendor License Agreement. This Agreement does not contain a license to use the integrated third party database product. Licensee has no right to use and are not licensed to use the copy of the third party database until Licensee has executed the Agreement, this Appendix and execute a third party database license agreement for the third party database. Upon request, Licensee shall provide to SAP the invoice number and/or license number and corresponding date for the third party database.

SAP makes no representations or warranties as to the terms of any license or the operation of any third-party database obtained directly from a third party supplier by Licensee. Licensee is responsible for support and maintenance of the third-party database licensed from a third party supplier, and SAP has no responsibility in this regard.

**8. LICENSE KEY:** Each copy of the Software licensed hereunder requires a license keycode. The license keycodes will be issued by SAP AG The required form to receive the license keycodes from SAP AG must be completed by Licensee and faxed to SAP AG within the four (4) week period following installation of the Software. The applicable SAP form and fax number will be included in each installation kit provided to Licensee upon delivery of the Software. Licensees that subsequently change Designated Units for Use of the licensed Software must be re-issued license keycodes for each respective copy of the licensed Software. Failure of Licensee to obtain necessary license keycodes for the licensed Software within four (4) weeks of installation of such Software, will cause the Software to have limited User access until such time as the license keycodes are issued.

**9. PUBLICITY:** In consideration of the additional Software discount, Licensee agrees to participate in reference activities for the Software including but not limited to reference calls and stories, press testimonials, site visits, SAPPHIRE participation, etc., at times mutually agreeable to the parties. SAP will make reasonable efforts to avoid having the reference services unreasonably interfere with Licensee's business.

**10. FUTURE LICENSE OPTION:** Until two (2) years from the effective date above, by executing appropriate Appendices to the Agreement in a single license transaction, Licensee may purchase the additional quantities of Software listed below for a Net License Fee of USD 1,108,500. Licensee is responsible for payment of additional Premium Support Fees and third party license fees, if any, associated with this option.

<u>Software</u>	<u>Quantity/Metric</u>
SAP Application Professional Users	700 Users
SAP Tax and Revenue Management for Public Sector	6,750,000 Business Partners
Database Interface for Above	N/A

**11. DOCUMENTATION:** Licensee shall have complete and unconstrained access to all necessary and appropriate documentation for the software listed above.

Accepted by:  
SAP Public Services, Inc.  
(SAP)

Accepted by:  
State of Michigan  
(Licensee)

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

(Appendix 1 IBP 05-06 ar)

### Schedule 1 to Appendix 1

#### Designated Unit Information

1. Name of Licensee or Subsidiary where Designated Unit is located: Same as Licensee

2. Designated Unit(s) to be identified by Licensee to SAP in writing.

Type/Model No.: \_\_\_\_\_

Serial No.: \_\_\_\_\_

Location of Designated Unit: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Software Delivery Contact Person: \_\_\_\_\_

3.

Hardware Information		Operating System		Database*	
Manufacturer	Model	Manufacturer	Release	Manufacturer	Release

\* Note: When Database is licensed from the vendor directly, insert P.O. Number \_\_\_\_\_, Invoice Number \_\_\_\_\_ and Date \_\_\_\_\_

\_\_\_\_\_  
Name Date

\_\_\_\_\_  
Title

State of Michigan  
(Licensee)

**Appendix 2**  
**effective September 5, 2006 ("Appendix")**  
**to**

**ATTACHMENT 1 ("the Agreement")**

This Appendix is hereby annexed to and made a part of the Agreement specified above. The following Articles and Provisions of the Agreement are specifically incorporated herein by reference: 1 (Definitions), 2 (License Grant), 4 (Price and Payment), 5 (Term), 6.1 (Protection of Proprietary Information), 7.2 (Express Disclaimer), 9 (Limitations of Liability), 10 (Assignment) and 12 (General Provisions). Unless stated otherwise herein, all other provisions of the Agreement are specifically excluded with respect to this Appendix. In each instance in which provisions of this Appendix contradict or are inconsistent with the incorporated provisions of the Agreement, the provisions of this Appendix shall prevail and govern.

**1. LICENSE GRANT:**

1.1 Software licensed by Licensee from SAP hereunder ("RWD software") is as follows:

**SAP Productivity Pak by RWD and SAP Productivity Pak Help Launchpad by RWD**

	<b>LICENSED:</b>	
	NUMBER of LICENSED SAP USERS	
	<u>Professional and</u>	
	<u>Limited Professional Users</u>	<u>Employee Users</u>
SAP Productivity Pak by RWD	<u>312</u>	<u>0</u>
SAP Productivity Pak Help Launchpad by RWD .....	<u>312</u>	<u>0</u>

**DATABASE INTERFACE:**   X  

**2. LICENSE FEE AND PAYMENT:** The Net License Fee to Licensee for the RWD software licensed in Item 1 above is USD 34,389, which shall be invoiced on or before September 30, 2006, and is payable net thirty (30) days from the date of invoice.

In the event Licensee exceeds the License Grant specified herein, and/or Licensee desires to expand the License Grant specified herein to include additional Affiliates, divisions or business units not identified herein Licensee agrees to provide written notice to SAP. SAP reserves the right to modify the Agreement to reflect such increase in the License Grant, recalculate the Net License Fee and Maintenance Fee accordingly and invoice Licensee for such increased license and maintenance fees based on SAP's then current pricing in effect.

Upon SAP's reasonable request, Licensee shall deliver to SAP a report, as defined by SAP, evidencing Licensee's usage of the RWD software licensed under this Agreement.

**3. INSTALLATION:** For the RWD software to be installed at a specific Licensee and/or Affiliate site within the Territory, Licensee shall provide SAP with written notice of the location of each computer and the number of Users, licensed in Item 1, allocated to each such device within sixty (60) days of the use of such device. Such notice shall be sent to: SAP Contract Department, Attention: Director of Contracts, 3999 West Chester Pike, Newtown Square, PA 19073. Licensee shall be responsible for installation of the RWD software.

**4. DELIVERY:** Delivery of the above-specified RWD software is estimated to take place in September, 2006. Physical delivery will be freight on board shipping point to the following location: State of Michigan, Department of Treasury, Operations Center, 2SW Room 256, 7285 Parsons Drive, Dimondale, MI 48821.

**5. MAINTENANCE FEE AND PAYMENT:**

5.1 To the degree RWD makes such maintenance services generally available to SAP, Licensee may request and SAP shall provide maintenance service ("Maintenance") with respect to the RWD software, so long as Licensee is subscribing for and paying for Maintenance. Maintenance currently includes the delivery of releases and versions of the RWD software made available to SAP, support via telephone, coordination of defect correction with RWD, and SAP's Online Software Services. Maintenance, from SAP, for the RWD software licensed hereunder is limited to the United States sites previously identified in the Agreement and related Appendices. Notwithstanding anything to the contrary in the Agreement, Licensee acknowledges RWD's standard hours of maintenance service are Monday through Friday, 8:30 a.m. to 5:30 p.m., eastern standard time, except for holidays as observed by RWD; further, Licensee acknowledges that for each release, RWD will offer maintenance services through SAP only for the most recent version and the version immediately prior thereto. After a new release becomes commercially available, RWD will provide maintenance services through SAP only for such new release and, until a new version of the new release becomes available, for the latest version of the prior release. In order to receive Maintenance hereunder, Licensee must make all required remote support connections to each Designated Unit, at its expense, as requested by SAP.



Licensee shall appoint no more than 5 individuals who are knowledgeable in the operation of the RWD software to serve as primary contacts in the event that Licensee needs to contact RWD for support. The identification and number of Key Users will be specified in Schedule 1 to this Appendix. All of Licensee's support inquiries shall be initiated solely through these Key Users. Licensee shall have the right to appoint substitute individuals to serve as Key Users provided the names of the new individuals and the individuals being substituted are communicated to SAP in writing. Licensee shall have the right to appoint additional individuals to serve as Key Users upon mutual agreement of the Licensee and SAP.

5.2 Maintenance at such United States site(s) shall commence on the first day of the month following initial Delivery of the RWD software. Annual Maintenance Fees for the software licensed under this Appendix, for the total number of Users specified above, is as follows:

Effective Date through September 30, 2011: USD 5,846 (17% of the Net License Fee of USD 34,389). Amount will be prorated for any partial periods.

October 1, 2011 and Beyond: Priced at SAP's then current factor in effect for all customers.

Other than as specified above, Maintenance fees are subject to change upon ninety (90) days notice to Licensee. Maintenance fees set forth above do not include federal, state or local taxes. Maintenance fees are invoiced on an annual basis effective January 1 of a calendar year and payable net forty-five (45) days from date of invoice. Any Maintenance fees due prior to January 1 are invoiced on a pro-rata basis for the given calendar year in effect.

5.3 In the event Licensee elects not to commence Maintenance upon the first day of the month following initial delivery of the RWD software, or Maintenance is otherwise declined for some period of time, and is subsequently requested or reinstated, SAP will invoice Licensee the accrued maintenance service fees associated with such time period plus a reinstatement fee.

6. **LIMITATION OF LIABILITY:** In no event shall SAP's total liability for damages of any kind or nature in any way arising from or related to the RWD software licensed hereunder exceed an amount equal to the Net License Fee identified in Item 2 hereof.

7. **THIRD-PARTY DATABASE:**

7.1 The software licensed hereunder requires a third party database product which has either been integrated or pre-installed as part of the software, or which must be installed to Use the software. Third party database product functionality as integrated in the software may differ from a non-integrated third party database product. Each third party database product is subject to its respective third party vendor License Agreement. This Agreement does not contain a license to use the integrated third party database product. Licensee has no right to use and are not licensed to use the copy of the third party database until Licensee has executed the Agreement, this Appendix and a third party database license agreement for the third party database. Upon request, Licensee shall provide to SAP the invoice number and/or license number and corresponding date for the third party database.

SAP makes no representations or warranties as to the terms of any license or the operation of any third-party database obtained directly from a third party supplier by Licensee. Licensee is responsible for support and maintenance of the third-party database licensed from a third party supplier, and SAP has no responsibility in this regard.

8. **FUTURE LICENSE OPTION:** Until two (2) years from the effective date above, by executing appropriate Appendices to the Agreement in a single license transaction, Licensee may purchase the additional quantities of RWD software listed below for a Net License Fee of USD 77,154. Licensee is responsible for payment of additional Premium Support Fees and third party license fees, if any, associated with this option.

<u>Software</u>	<u>Quantity/Metric</u>
SAP Productivity Pak by RWD	700 Users
SAP Productivity Pak Help Launchpad by RWD	700 Users
Database Interface for Above	N/A

Accepted by:

SAP Public Services, Inc.  
SAP

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Accepted by:

State of Michigan  
Licensee

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Schedule 1  
to Appendix 2**

**Software and User Allocation**

*Licensee -- please assist with inserting this information*

**Contact Data**

<b>Customer Name:</b> State of Michigan	
<b>*Shipping Address:</b>	
<b>City/State/Zip:</b>	
<b>Contact Name:</b>	
<b>Contact Phone Number:</b>	<b>Contact Fax Number:</b>
<b>Contact E-Mail Address:</b>	

\* Shipping address must be a street address, PO Box is not sufficient.

**Products Licensed:**

	NUMBER of LICENSED SAP Professional and Limited Professional USERS	NUMBER of LICENSED SAP Employee USERS
<b>SAP Productivity Pak by RWD</b>	312	0
<b>SAP Productivity Pak Help Launchpad by RWD</b>	312	0

<b>Current SAP Release:</b>	<b>Microsoft Windows Version:</b>
<b>Microsoft Office Version:</b>	<b>SAP GUI Version:</b>

<b>Account Executive Name:</b> Jason Beal	<b>Phone No.:</b> 812.528.1773
	<b>Fax No.:</b>
<b>Date Form Completed:</b>	<b>Contract Start Date:</b> September 5, 2006
	<b>Maint. Start Date:</b> October 1, 2006
	<b>Maint Fee:</b> USD 5,846

**Appendix 3**  
**effective September 5, 2006 ("Appendix")**  
**to**  
**ATTACHMENT 1 ("the Agreement")**

This Appendix is hereby annexed to and made a part of the Agreement specified above. In each instance in which provisions of this Appendix contradict or are inconsistent with the provisions of the Agreement, the provisions of this Appendix shall prevail and govern.

- 1. **Fees/Payment Terms.** For a fee of USD 152,750, Licensee shall receive a SAP Preferred Card training fee credit totaling USD 161,151.25 for Eligible SAP Services.

Such fee shall be invoiced upon execution of this Appendix and is payable upon Licensee's receipt of SAP's invoice. Any training provided in excess of such training fee credit shall be invoiced at the then current rates upon scheduling without premium, and is payable by Licensee upon receipt of SAP's invoice.

Licensee may purchase additional SAP Preferred Cards during the same term as specified below and SAP will provide that additional purchase at the original premium rate (or higher premium rate, if applicable). However, the termination date for the additional cards must coincide with the termination date of the initial card. Each card is contracted, tracked and monitored separately.

At no time will any portion of the training fee credit be refundable, including at the conclusion of the Term set forth below.

- 2. **Eligible SAP Services.** Preferred Card Training fee credits may be used as payment for SAP Education Classroom Training, SAP Education Webinars, SAP Education E-Learning Products, SAP Education E-Learning Services, SAP Education On-Site Training, SAP Education Solution Academy classes, and SAP Educational End-user Assessments provided in the United States only. The scope of eligible services for the Preferred Card Training fee credits does not include any third party products and/or services.

Costs associated with the delivery of Eligible SAP Services such as travel and living expenses; equipment charges, freight, remote server connection fees, and books, or cancellation fees charged in accordance with SAP Education training policies will be applied to Preferred Card without premium benefit.

A detailed list of applicable courses, content, schedules and administrative policies are available on the SAP Education web site [www.sap.com/usa/education](http://www.sap.com/usa/education).

- 3. **Activation Date.** The activation date for the SAP Preferred Card is the date that SAP receives full payment of the SAP Preferred Card fees specified above from Licensee. Classes taken prior to such date cannot be applied to the SAP Preferred Card.
- 4. **Term.** The training fee credit set forth above shall be applied to the then current SAP training course fees until such time as the training fee credit is fully utilized or twenty-four months after the Activation Date of Licensee's SAP Preferred Card, whichever is earlier.
- 5. **Training Materials.** SAP Training Materials provided (if any) are intended solely for the use of the individual student attending training and may not be copied, distributed or used for any other purpose. Licensee agrees not to disclose, transfer, or otherwise make available the Training Materials to any third parties.

Accepted by: Accepted by:

SAP Public Services, Inc.  
(SAP)

State of Michigan  
(Licensee)

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

(Appendix 3 SAP Preferred Card 05/06)



## ATTACHMENT 2

CONTRACT NO. 071B6200401  
between  
State of Michigan ("State" or "Licensee")  
and  
SAP Public Services, Inc. ("Contractor" or "SAP")

### Consulting Statement of Work ("Consulting SOW")

Two SAP Consulting Services projects are defined hereunder, as follows:

**Project 1 Name: SAP Consulting Safeguarding Services**, provided in support of the State's Michigan Integrated Tax Administration System (MIITAS) project ("Project")

This Statement of Work, effective as of the date of Contract No. 071B6200401 describes the Services to be provided to Licensee in support of the Project at the rates listed in Section 3 below, as authorized by Licensee by signing this Consulting SOW.

#### 1. Project Approach – SAP Consulting

The SAP Consultant(s) assigned to this Project will assist in the implementation and configuration of the SAP Software and assist Licensee in gaining a better understanding of the SAP Software applications.

Licensee is owner of the Project and is responsible for and controls the implementation, scope, costs, resources and targeted solutions. Licensee shall designate a Project Manager to work with the SAP Consultant(s) to facilitate the provision of the Services. It is mutually understood that business requirements, resources and dates may change. Licensee is responsible for revising the estimated Project plans and requesting changes to the requirements for SAP Services. The SAP Consultant(s) may assist in planning the Project, selecting resources and quality checking the activities and progress.

The Project is estimated to start on September 5, 2006 and has a projected completion date of September 4, 2008. Pursuant to the provisions of this Consulting SOW, SAP Consultants will work on the Project during this time, and provide support as specified by Licensee.

#### 2. Assumptions and Responsibilities – SAP Consulting

Licensee is responsible for providing appropriate Project resources in a timely and sufficient manner, including but not limited to equipment, data, information, workspace and appropriate and cooperative personnel, to facilitate the performance of the Services.

The assumptions and responsibilities for this Project are:

- All supporting documentation work product will be developed for industry standard Microsoft Windows-based PCs using appropriate (as reasonably determined by SAP) Microsoft Office applications (Word, Excel, and PowerPoint) or other mutually agreeable documentation development process and/or application.
- No software Modifications or user exits will be made by SAP under this CSOW.
- Any data cleansing or data cleanup is wholly the responsibility of Licensee.
- Licensee will provide knowledgeable, decision empowered resources who are available to work on the Projects as part of the Project team.
- The Project will have sponsorship from Licensee's senior management, who will be available on a timely and regular basis to monitor the Project progress and to act as a decision maker for policy decisions.
- Licensee will provide a working environment and facilities adequate for SAP to perform their assigned duties. This includes, but is not limited to, adequate conference rooms, cubicle space and telephone access.
- Licensee will support the use of the SAP team laptops on its network or Licensee will provide PCs with the Microsoft Office Suite and e-mail capability for the Project team.



- Project team members will be given access to the Licensee’s SAP environment. Licensee shall provide secure dial-in and/or direct access to the Licensee networks as necessary.
- SAP will be provided with full access to all of Licensee’s facilities necessary for the Project, including all necessary identification material (badges, cards, etc.), subject to the terms and conditions of the Agreement. This includes full access to such buildings and systems during and after normal business hours, on weekends, and on holidays. Limitation of SAP access during these times may reduce SAP’s ability to maintain the proposed schedule.
- During the Project Preparation Phase, the SAP and Licensee Project Managers will agree upon a project work week for each full time Consultant. Such work week will be defined in one of the following categories:
  1. 3-4-5 (3 nights/4 days at Licensee’s location; 5<sup>th</sup> day at remote location).
  2. Four days (40 hours) at Licensee’s location.
  3. Five days at Licensee’s location.
  4. Other, as mutually agreed prior to the Project or as the Project progresses.

Licensee agrees that any estimates provided in this Statement of Work may be subject to change if Licensee’s responsibilities and Project assumptions are not fulfilled.

**3. Assigned SAP Consultants – SAP Consulting**

SAP will support the Project by providing Consultant(s) to be located at designated U.S. Licensee facilities. Licensee agrees and understands that the assigned SAP Consultant(s) will occasionally perform Services on the Project from a remote location.

The Consultant types currently assigned to Licensee to work on this Project are:

Function	Rate *	Start Date	Estimated Duration (Yr 1 & 2)	Total Estimated Cost Year 1 & 2
Technical Systems Consultant	287.50/327.50 per hour	September 2006	390 Hours	\$112,907.50
Functional Configuration Consultant	287.50/327.50 per hour	September 2006	0 Hours	\$0.00
Safeguarding	287.50/327.50 per hour	September 2006	160 Hours	\$49,180.00

**\*Hourly rates indicated in the table above are for Years 1 and 2 respectively.**

**The estimated consulting fees for Project 1 are \$162,087.50, inclusive of expenses. This estimate is for Licensee’s budgetary and SAP’s resource scheduling purposes only, and is subject to change.**

The prices herein are based upon a 40-hour work week for core Project team members, including those from Licensee. However, a Project of this nature may have “peak” periods where the Project team will be expected to work outside normal business hours. Full-time Licensee core Project team members will not have responsibility for work outside the scope of the Project. Other Licensee projects that are currently underway or may start during this Project will not utilize the resources, facilities, or technical infrastructure required for this Project. Licensee will continue to be responsible for the existing system without having a negative impact on the Project.

**4. Compensation of SAP – SAP Consulting**

The Services provided by SAP will be invoiced monthly, on a time and expense basis. The invoice will include a summary of the hours charged by Consultant, and all applicable expenses. All payments are due forty-five days from date of SAP’s invoice. Any fees not paid when due may accrue interest at the rate of 18% per annum, but not to exceed the maximum amount as allowed by law.

Any invoice discrepancies will be documented by Licensee and forwarded to SAP within 14 days of the receipt of the invoice.

**5. Non-Solicitation/No-Hire – SAP Consulting**

Neither party shall solicit or hire, in any capacity whatsoever, any of the other party’s employees involved in this Consulting SOW during the term of this Consulting SOW and for a period of six (6) months from the termination hereof, without the express written consent of the other party.



**6. General**

- (a) Hourly rates are applied to consulting services provided Monday through Friday, 6:00 a.m. - 8:00 p.m., excluding holidays as observed by SAP.
- (b) The following constitutes Off-Hours:
  - SAP observed Holidays
  - Weekends: 8:00 p.m. Friday until 6:00 a.m. Monday
  - Weekdays: 8:00 p.m. until 6:00 a.m.
- (c) On-Call service is a pre-arranged service by which Licensee places a request to have a Consultant accessible by pager for a specified time period. During the period for which a Consultant is accessible by pager, On-Call Rates will be charged. If a Consultant must actually perform services during the On-Call period, the services will be billed at the appropriate Hourly Rate or Off-Hours Hourly Rate, instead of the On-Call rate. This service will be provided remotely via a telecommunications link.
- (d) Remote services can be requested via SAP's toll-free number and are provided via a telecommunications link during business hours (Monday through Friday, 6:00 a.m. – 8:00 p.m.). Remote services will be provided at the rates set forth above.
- (e) For work at Licensee's premises, a minimum charge amounting to four (4) hours for the given Consultant is billable.
- (f) If services are pre-arranged and Licensee cancels with less than two (2) business days notice, Licensee will be billed for eight (8) hours.

IN WITNESS WHEREOF, the parties have so agreed as of the date written above for Project 1.

<b>ACCEPTED BY:</b>		<b>ACCEPTED BY:</b>	
<b>SAP Public Services, Inc. (SAP)</b>		<b>State of Michigan (Licensee)</b>	
<b>BY:</b>		<b>BY:</b>	
<b>PRINT NAME:</b>		<b>PRINT NAME:</b>	
<b>TITLE:</b>		<b>TITLE:</b>	
<b>DATE:</b>		<b>DATE:</b>	



## **Project 2 Name: SAP Productivity Pak Training**

### **1. SCOPE AND APPROACH – SAP Education**

The State requires SAP Productivity Pak by RWD Technologies software implementation Services, provided in support of the Michigan Integrated Tax Administration System (MIITAS) project (hereinafter referred to as the “Project”). The assigned Consultant will assist The State in the training and coaching of the SAP Productivity Pak software licensed by The State under an Appendix to the End-User Agreement and will assist The State in gaining a better understanding of how the SAP Productivity Pak software is used to support the creation of SAP performance support and system documentation.

The Project will start on a date to be determined by the State and has an estimated duration of twenty-five (25) days (the “Duration”). The SAP Consultants will provide support as specified by The State according to the project plans.

SAP will provide the following on-site services over a **25-day** period.

- A. *Vision Workshop* – A single session will be conducted for up to 15 users to provide initial guidance on the features, best practices, best use and implementation direction of SAP Productivity Pak components as part of The State’s documentation, training and performance support initiatives. This is a full **two (2)** day session.
- B. *Planning Workshop* – A single session will be conducted for up to 15 users to assist with the creation of a formal rollout plan as it relates to the the State’s current documentation, training and performance support initiative. This is a full **two (2)** day session.
- C. *Development Standards Workshop* – A single session will be conducted for up to 15 users to assist in developing specific documentation writing and development processes as well as establishing expected documentation standards. This is a full **two (2)** day session.
- D. *Installation* – A single session will be conducted for up to 15 users who will be involved in administering SAP Productivity Pak Installation including server setup and landscape, installation process, technical configuration, customizations and routine maintenance. This is a **two (2)** day session.
- E. *Set-Up* – A single session will be conducted for up to 15 users who will be involved in administering SAP Productivity Pak Setup of the training environment for the SAP Productivity Pak Administrative and Authoring solution. This is a **full-day** session.
- F. *Administrator Training* – A single end user training session will be conducted to teach up to 5 participants on the configuration features of the SAP Productivity Pak Administrative components including basic configuration, managing libraries, templates, glossary, website creation, workflow and publishing. This is a **full-day** session. Training manuals will be provided or up to 5 participants.
- G. *Author Training* – A single end user training session will be conducted to teach up to 12 participants on SAP Productivity Pak content authoring components including roles and responsibilities, overview of the uPerform solution, recording, editing, annotations, glossary, publishing, checking in and out documents, managing workflows and managing collaborations. This is a full **four (4)** day session. Training manuals will be provided for up to 12 participants.
- H. *Functional and Technical Consulting* – A single session will be conducted to provide uPerform onsite assistance or
- I. support by leveraging the expertise of functional and technical SAP Productivity Pak experts. This is a full **eleven (11)** day session.

The State is owner of the Project and is responsible for and controls the implementation, scope, costs, resources and targeted solutions. The State shall designate a Project Manager to work with the SAP Project Manager to facilitate the provision of the services. It is mutually understood that business requirements, resources and dates may change. The State is responsible for revising the estimated project plans and requesting changes to the requirements for SAP services. The SAP Project Manager will assist in planning the project, selecting resources and quality checking the activities and progress.

### **2. THE STATE RESPONSIBILITIES – SAP Education**

The State authorizes SAP to provide Services as herein.



The State agrees to provide appropriate project resources, including but not limited to equipment, data, information, workspace and appropriate and cooperative personnel, to facilitate the performance of the services.

Prior to the start of training, the SAP Productivity Pak software must be installed by the State on up to 15 separate computers.

- A. The State shall ensure administrative rights are provided for all SAP Productivity Pak-based workstations to allow proper installation of the client-based SAP Productivity Pak components.
- B. Prior to the start of training for the SAP Productivity Pak Help Launchpad, The State shall install the SAP Productivity Pak server and client components of the Help Launchpad code. This will need to be facilitated by the the State's SAP BASIS team. The State's failure to install the software will cause delays in the completion of the SAP Productivity Pak training.

The State agrees that any change to or The State's failure to fulfill any of the assumptions set forth herein may affect SAP's ability to provide timely and efficient Services hereunder and that SAP's fees shall be subject to change.

**3. PROJECT ASSUMPTIONS – SAP Education**

- A. On-site Services shall be provided at The State facilities. The State shall provide office space for on-site work with access to telephones, printers, and copiers.
- B. Based on the preliminary assumptions, SAP assumes The State will utilize SAP Productivity Pak.

**4. ASSIGNED SAP CONSULTANTS – SAP Education**

SAP will support the Project implementation by providing Consultants to be located at designated State facilities. The State agrees and understands that the assigned SAP Consultant(s) may occasionally perform Services on the Project implementation from an SAP office.

The Consultant(s) currently assigned to The State to work on this Project is:

ProPak Planner	USD 285.00	09/15/06	168	USD 47,880.00
ProPak Planner	USD 285.00	09/15/06	32	USD 9,120.00
<b>ESTIMATED TOTAL COSTS - Project 2</b>				<b>USD 57,000.00</b>

Expenses are included in above hourly rates.

**5. COMPENSATION OF SAP – SAP Education**

The Service Fees are based on the following assumptions:

The Services provided by SAP will be invoiced monthly, on a time and expense basis, and will include a summary of the hours charged by category. All payments are due forty five days from date of invoice.

The cost of Project 2 is **USD\$57,000.00**.

**6. NON-SOLICITATION/NO-HIRE**

Neither party shall solicit or hire, in any capacity whatsoever, any of the other party's employees involved in this Consulting SOW during the term of this Consulting SOW and for a period of six (6) months from the termination hereof, without the express written consent of the other party.

**7. GENERAL**

- (a) Hourly rates are applied to consulting services provided Monday through Friday, 6:00 a.m. - 8:00 p.m., excluding holidays as observed by SAP.
- (b) The following constitutes Off-Hours:
  - SAP observed Holidays
  - Weekends: 8:00 p.m. Friday until 6:00 a.m. Monday
  - Weekdays: 8:00 p.m. until 6:00 a.m.
- (c) On-Call service is a pre-arranged service by which Licensee places a request to have a Consultant accessible by pager for a specified time period. During the period for which a Consultant is accessible by pager, On-Call Rates



will be charged. If a Consultant must actually perform services during the On-Call period, the services will be billed at the appropriate Hourly Rate or Off-Hours Hourly Rate, instead of the On-Call rate. This service will be provided remotely via a telecommunications link.

- (d) Remote services can be requested via SAP's toll-free number and are provided via a telecommunications link during business hours (Monday through Friday, 6:00 a.m. – 8:00 p.m.). Remote services will be provided at the rates set forth above.
- (e) For work at Licensee's premises, a minimum charge amounting to four (4) hours for the given Consultant is billable.
- (f) If services are pre-arranged and Licensee cancels with less than two (2) business days notice, Licensee will be billed for eight (8) hours.

IN WITNESS WHEREOF, the parties have so agreed as of the date written above for Project 2.

<b>ACCEPTED BY:</b>		<b>ACCEPTED BY:</b>	
<b>SAP Public Services, Inc. (SAP)</b>		<b>State of Michigan (Licensee)</b>	
<b>BY:</b>		<b>BY:</b>	
<b>PRINT NAME:</b>		<b>PRINT NAME:</b>	
<b>TITLE:</b>		<b>TITLE:</b>	
<b>DATE:</b>		<b>DATE:</b>	