

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

March 10, 2010

CHANGE NOTICE NO. 4
OF
CONTRACT NO. 071B6200426
between
THE STATE OF MICHIGAN
and

| | | | |
|--|------------|---|-------------------------------|
| NAME & ADDRESS OF VENDOR | | TELEPHONE (704) 847-1234 Richard Cooke, Sr. | |
| Tax Management Associates, Inc. 2225 Coronation Boulevard Charlotte, NC 28227 | | VENDOR NUMBER/MAIL CODE | |
| | | BUYER/CA (517) 241-1916 Jim Wilson | |
| Contract Compliance Inspector: David Buick Resident Redemption Audits – Department of Treasury | | | |
| CONTRACT PERIOD: | | From: September 15, 2006 | To: September 14, 2011 |
| TERMS | N/A | SHIPMENT | N/A |
| F.O.B. | N/A | SHIPPED FROM | N/A |
| MINIMUM DELIVERY REQUIREMENTS N/A | | | |

NATURE OF CHANGE(S):

Effective immediately, the State hereby revises Contract Sections 1.601 – Compensation and Payment, and Attachment A – Pricing.

Section 1.601

The State hereby changes Section 1.601 to the following:

1. 95% of program payment to be made to TMA by September 30th.
 - 25% of cost will be paid upon completion of all data collected.
 - 25% of cost will be paid upon completion of all queries.
 - 25% of cost will be paid upon completion of all letters being mailed.
 - 20% of cost will be paid on or before September 30th.
2. The final 5% of payment is considered hold-back and is not due until the Contract Compliance Inspector has given final approval.

Attachment A Pricing

Effectively immediately, all fees are hereby reduced by 3%.

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

AUTHORITY/REASON:

Per agency request (CCA dated 12/09/09), vendor agreement (letter dated 12/07/09), and DMB/Purchasing Operations' approval.

CURRENT AUTHORIZED SPEND LIMIT REMAINS: \$6,118,245.00

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

April 13, 2009

**CHANGE NOTICE NO. 3
 OF
 CONTRACT NO. 071B6200426
 between
 THE STATE OF MICHIGAN
 and**

| | |
|--|---|
| NAME & ADDRESS OF VENDOR Tax Management Associates, Inc. 2225 Coronation Boulevard Charlotte, NC 28227 | TELEPHONE (704) 847-1234 Richard Cooke, Sr. |
| | VENDOR NUMBER/MAIL CODE |
| | BUYER/CA (517) 241-1916 Jim Wilson |
| Contract Compliance Inspector: David Buick Resident Redemption Audits – Department of Treasury | |
| CONTRACT PERIOD: From: September 15, 2006 To: September 14, 2011 | |
| TERMS <p style="text-align: center;">N/A</p> | SHIPMENT <p style="text-align: center;">N/A</p> |
| F.O.B. <p style="text-align: center;">N/A</p> | SHIPPED FROM <p style="text-align: center;">N/A</p> |
| MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p> | |

NATURE OF CHANGE(S):

Effective April 13, 2009, the State hereby exercises two Contract option years, making the new Contract expiration date September 14, 2011. Funds in the amount of \$2,524,952.00 are added to this Contract.

Additionally, the State hereby revises Contract Sections 1.001, 1.101, 1.106 and Attachment A Pricing, per the attached.

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

AUTHORITY/REASON:

Per agency request (PRF dated 2/10/09), vendor agreement (letter dated 2/27/09), Ad Board approval on 4/7/09) and DMB/Purchasing Operations' approval.

TOTAL REVISED ESTIMATED CONTRACT VALUE: \$6,118,245.00

Section 1.001

The State hereby replaces Contract Section 1.001 with the following:

The purpose of this Contract is to provide the services of a Contractor, to act as the authorized representative of this State, to design an audit methodology, and then conduct audits of principal residence exemptions for any number of counties, up to all eighty-three, in which the State is responsible for conducting such audits.

The Contractor will audit the PRE filings and real property records, collect electronic information related to the audit from all audited counties, incorporate that information into an in-house database, query and report on possible invalid PRE parcels, and staff a contact center to process the query results and questionnaires sent to acquire more information from taxpayers.

The Contractor will increase staff in the contact center as necessary to cover the potential questionnaire and taxpayer call volume. The Contractor will also staff appropriately to be able to provide agents for taking calls and processing returns, and review managers for ensuring quality and consistency in interpretations. The contact center is located in, and will remain, in our Brighton, Michigan office, and all additional staff will be located at that facility.

Section 1.101

The State hereby replaces the first sentence of Contract Section 1.101 with the following:

The Contractor shall conduct audits of principal residence exemptions for any number of counties, up to all counties in Michigan, in which the State is responsible for conducting such audits.

Section 1.106

The State hereby adds the following paragraphs at the end of Section 1.106:

As this is the third year of the contract, the Contractor has reduced the cost of services for the previous two years consecutively. Currently, the Contractor uses a parcel count approximation by County, matched to a per parcel fee. For the third year, this cost has been reduced to a "residual" per parcel fee of \$0.30 per parcel in the original contract, coupled with a \$0.25 per parcel rate for all other counties, which was an incorporated reduction in last year's contract change document. These rates reflect a going forward residual rate for all audit activity.

The Contractor agrees to continue to audit for this residual audit fee for all years going forward. This includes incorporating new audit requirements, including changes to the laws made to date, which complicate the audit environment. The Contractor will incorporate all new changes from the Michigan statutes related to Principal Residence Exemptions at no additional cost to the state.

Also, the Contractor agrees to allow the Department of Treasury to use the contact center in the denial notification process, an area that was previously out of scope in the contract, at no additional cost in the remaining years. The Contractor will provide to Treasury the full use of staff and the Contractor's contact center resources, including lease space, phones, database tracking, and staff, to aid in the denial notification process and to answer taxpayer questions.

**Article 1, Attachment A
Pricing**

| Cost per County | | | |
|------------------------|---------------|---------------|------------------|
| County | Year 4 | Year 5 | Subtotals |
| Alcona | \$ 2,776.00 | \$ 2,776.00 | \$ 5,552.00 |
| Alger | \$ 1,615.00 | \$ 1,615.00 | \$ 3,230.00 |
| Allegan | \$ 11,838.00 | \$ 11,838.00 | \$ 23,676.00 |
| Alpena | \$ 5,055.00 | \$ 5,055.00 | \$ 10,110.00 |
| Antrim | \$ 4,091.00 | \$ 4,091.00 | \$ 8,182.00 |
| Arenac | \$ 2,501.00 | \$ 2,501.00 | \$ 5,002.00 |
| Baraga | \$ 1,206.00 | \$ 1,206.00 | \$ 2,412.00 |
| Barry | \$ 7,914.00 | \$ 7,914.00 | \$ 15,828.00 |
| Bay | \$ 15,363.00 | \$ 15,363.00 | \$ 30,726.00 |
| Benzie | \$ 2,892.00 | \$ 2,892.00 | \$ 5,784.00 |
| Berrien | \$ 19,001.00 | \$ 19,001.00 | \$ 38,002.00 |
| Branch | \$ 6,584.00 | \$ 6,584.00 | \$ 13,168.00 |
| Calhoun | \$ 15,108.00 | \$ 15,108.00 | \$ 30,216.00 |
| Cass | \$ 6,311.00 | \$ 6,311.00 | \$ 12,622.00 |
| Charlevoix | \$ 6,788.00 | \$ 6,788.00 | \$ 13,576.00 |
| Cheboygan | \$ 4,416.00 | \$ 4,416.00 | \$ 8,832.00 |
| Chippewa | \$ 5,133.00 | \$ 5,133.00 | \$ 10,266.00 |
| Clare | \$ 7,382.00 | \$ 7,382.00 | \$ 14,764.00 |
| Clinton | \$ 7,225.00 | \$ 7,225.00 | \$ 14,450.00 |
| Crawford | \$ 4,261.00 | \$ 4,261.00 | \$ 8,522.00 |
| Delta | \$ 5,012.00 | \$ 5,012.00 | \$ 10,024.00 |
| Dickinson | \$ 4,523.00 | \$ 4,523.00 | \$ 9,046.00 |
| Eaton | \$ 11,278.00 | \$ 11,278.00 | \$ 22,556.00 |
| Emmet | \$ 5,108.00 | \$ 5,108.00 | \$ 10,216.00 |
| Genesee | \$ 60,783.00 | \$ 60,783.00 | \$ 121,566.00 |
| Gladwin | \$ 4,534.00 | \$ 4,534.00 | \$ 9,068.00 |
| Gogebic | \$ 2,757.00 | \$ 2,757.00 | \$ 5,514.00 |
| Grand Traverse | \$ 9,736.00 | \$ 9,736.00 | \$ 19,472.00 |
| Gratiot | \$ 3,975.00 | \$ 3,975.00 | \$ 7,950.00 |
| Hillsdale | \$ 6,651.00 | \$ 6,651.00 | \$ 13,302.00 |
| Houghton | \$ 4,572.00 | \$ 4,572.00 | \$ 9,144.00 |
| Huron | \$ 6,784.00 | \$ 6,784.00 | \$ 13,568.00 |
| Ingham | \$ 30,011.00 | \$ 30,011.00 | \$ 60,022.00 |
| Ionia | \$ 5,912.00 | \$ 5,912.00 | \$ 11,824.00 |
| Iosco | \$ 6,784.00 | \$ 6,784.00 | \$ 13,568.00 |
| Iron | \$ 2,927.00 | \$ 2,927.00 | \$ 5,854.00 |
| Isabella | \$ 7,047.00 | \$ 7,047.00 | \$ 14,094.00 |
| Jackson | \$ 20,816.00 | \$ 20,816.00 | \$ 41,632.00 |
| Kalamazoo | \$ 32,853.00 | \$ 32,853.00 | \$ 65,706.00 |
| Kalkaska | \$ 3,591.00 | \$ 3,591.00 | \$ 7,182.00 |
| Kent | \$ 59,890.00 | \$ 59,890.00 | \$ 119,780.00 |
| Keweenaw | \$ 608.00 | \$ 608.00 | \$ 1,216.00 |
| Lake | \$ 4,456.00 | \$ 4,456.00 | \$ 8,912.00 |
| Lapeer | \$ 8,812.00 | \$ 8,812.00 | \$ 17,624.00 |
| Leelanau | \$ 3,649.00 | \$ 3,649.00 | \$ 7,298.00 |

| | | | |
|--------------|----------------|----------------|----------------|
| Lenawee | \$ 10,567.00 | \$ 10,567.00 | \$ 21,134.00 |
| Livingston | \$ 17,613.00 | \$ 17,613.00 | \$ 35,226.00 |
| Luce | \$ 1,330.00 | \$ 1,330.00 | \$ 2,660.00 |
| Mackinac | \$ 3,126.00 | \$ 3,126.00 | \$ 6,252.00 |
| Macomb | \$ 106,005.00 | \$ 106,005.00 | \$ 212,010.00 |
| Manistee | \$ 4,722.00 | \$ 4,722.00 | \$ 9,444.00 |
| Marquette | \$ 8,520.00 | \$ 8,520.00 | \$ 17,040.00 |
| Mason | \$ 5,321.00 | \$ 5,321.00 | \$ 10,642.00 |
| Mecosta | \$ 8,000.00 | \$ 8,000.00 | \$ 16,000.00 |
| Menominee | \$ 3,557.00 | \$ 3,557.00 | \$ 7,114.00 |
| Midland | \$ 8,779.00 | \$ 8,779.00 | \$ 17,558.00 |
| Missaukee | \$ 2,270.00 | \$ 2,270.00 | \$ 4,540.00 |
| Monroe | \$ 18,687.00 | \$ 18,687.00 | \$ 37,374.00 |
| Montcalm | \$ 6,822.00 | \$ 6,822.00 | \$ 13,644.00 |
| Montmorency | \$ 2,421.00 | \$ 2,421.00 | \$ 4,842.00 |
| Muskegon | \$ 18,163.00 | \$ 18,163.00 | \$ 36,326.00 |
| Newaygo | \$ 6,151.00 | \$ 6,151.00 | \$ 12,302.00 |
| Oakland | \$ 129,764.00 | \$ 129,764.00 | \$ 259,528.00 |
| Oceana | \$ 1,677.00 | \$ 1,677.00 | \$ 3,354.00 |
| Ogemaw | \$ 4,007.00 | \$ 4,007.00 | \$ 8,014.00 |
| Ontonagon | \$ 4,157.00 | \$ 4,157.00 | \$ 8,314.00 |
| Osceola | \$ 3,356.00 | \$ 3,356.00 | \$ 6,712.00 |
| Oscoda | \$ 2,860.00 | \$ 2,860.00 | \$ 5,720.00 |
| Otsego | \$ 3,666.00 | \$ 3,666.00 | \$ 7,332.00 |
| Ottawa | \$ 24,409.00 | \$ 24,409.00 | \$ 48,818.00 |
| Presque Isle | \$ 2,632.00 | \$ 2,632.00 | \$ 5,264.00 |
| Roscommon | \$ 7,648.00 | \$ 7,648.00 | \$ 15,296.00 |
| Saginaw | \$ 22,098.00 | \$ 22,098.00 | \$ 44,196.00 |
| Sanilac | \$ 6,983.00 | \$ 6,983.00 | \$ 13,966.00 |
| Schoolcraft | \$ 1,499.00 | \$ 1,499.00 | \$ 2,998.00 |
| Shiawassee | \$ 9,643.00 | \$ 9,643.00 | \$ 19,286.00 |
| St Clair | \$ 18,231.00 | \$ 18,231.00 | \$ 36,462.00 |
| St Joseph | \$ 6,855.00 | \$ 6,855.00 | \$ 13,710.00 |
| Tuscola | \$ 7,715.00 | \$ 7,715.00 | \$ 15,430.00 |
| VanBuren | \$ 9,056.00 | \$ 9,056.00 | \$ 18,112.00 |
| Washtenaw | \$ 36,189.00 | \$ 36,189.00 | \$ 72,378.00 |
| Wayne | \$ 273,458.00 | \$ 273,458.00 | \$ 546,916.00 |
| Wexford | \$ 3,990.00 | \$ 3,990.00 | \$ 7,980.00 |
| | | | |
| Subtotals | \$1,262,476.00 | \$1,262,476.00 | |
| | | | |
| | | Grand Total | \$2,524,952.00 |

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

April 30, 2008

CHANGE NOTICE NO. 2
OF
CONTRACT NO. 071B6200426
between
THE STATE OF MICHIGAN
and

| | |
|--|--|
| NAME & ADDRESS OF VENDOR Tax Management Associates, Inc. 2225 Coronation Boulevard Charlotte, NC 28227 | TELEPHONE (704) 847-1234 Richard Cooke, Sr. |
| | VENDOR NUMBER/MAIL CODE |
| | BUYER/CA (517) 241-1916 Jim Wilson |
| Contract Compliance Inspector: David Buick Resident Redemption Audits – Department of Treasury | |
| CONTRACT PERIOD: From: September 15, 2006 To: September 14, 2009 | |
| TERMS <p style="text-align: center;">N/A</p> | SHIPMENT <p style="text-align: center;">N/A</p> |
| F.O.B. <p style="text-align: center;">N/A</p> | SHIPPED FROM <p style="text-align: center;">N/A</p> |
| MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p> | |

NATURE OF CHANGE(S):

Effective immediately, this Contract is amended to include auditing of opt-out counties per proposal dated October 19, 2007 and clarification dated November 1, 2007; additionally, \$547,764.00 is added to the Contract. The Department of Treasury will authorize audits of opt-out counties via Purchase Order issuance.

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

AUTHORITY/REASON:

Per agency request and DMB/Purchasing Operations.

TOTAL REVISED ESTIMATED CONTRACT VALUE: \$3,593,293.00

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

January 30, 2008

CHANGE NOTICE NO. 1
OF
CONTRACT NO. 071B6200426
between
THE STATE OF MICHIGAN
and

| | |
|--|---|
| NAME & ADDRESS OF VENDOR Tax Management Associates, Inc. 2225 Coronation Boulevard Charlotte, NC 28227 | TELEPHONE (704) 847-1234 Richard Cooke, Sr. |
| | VENDOR NUMBER/MAIL CODE |
| | BUYER/CA (517) 241-1916 Jim Wilson |
| Contract Compliance Inspector: David Buick Resident Redemption Audits – Department of Treasury | |
| CONTRACT PERIOD: From: September 15, 2006 To: September 14, 2009 | |
| TERMS <p style="text-align: center;">N/A</p> | SHIPMENT <p style="text-align: center;">N/A</p> |
| F.O.B. <p style="text-align: center;">N/A</p> | SHIPPED FROM <p style="text-align: center;">N/A</p> |
| MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p> | |

NATURE OF CHANGE(S):

Effective immediately, the total number of counties to be audited for calendar years 2007 and 2008 is hereby revised as follows:

- Total number of counties will be 36.
- Eaton and Emmett counties are deleted.
- Antrim, Benzie, Charlevoix, Clinton, Crawford, Keweenaw, Mecosta, and Ontonagon are added.

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

AUTHORITY/REASON:

Per agency request (PRF dated 12/21/07) and DMB/Purchasing Operations.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$3,045,529.00

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

September 15, 2006

NOTICE
OF
CONTRACT NO. 071B6200426
between
THE STATE OF MICHIGAN
and

| | |
|--|---|
| NAME & ADDRESS OF VENDOR Tax Management Associates, Inc. 2225 Coronation Boulevard Charlotte, NC 28227 | TELEPHONE (704) 847-1234 Richard Cooke, Sr. |
| | VENDOR NUMBER/MAIL CODE |
| | BUYER/CA (517) 241-1647 Irene Pena, CPPB |
| Contract Compliance Inspector: David Buick Resident Redemption Audits – Department of Treasury | |
| CONTRACT PERIOD: From: September 15, 2006 To: September 14, 2009 | |
| TERMS <p style="text-align: center;">N/A</p> | SHIPMENT <p style="text-align: center;">N/A</p> |
| F.O.B. <p style="text-align: center;">N/A</p> | SHIPPED FROM <p style="text-align: center;">N/A</p> |
| MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p> | |

The terms and conditions of this Contract are those of ITB #071I6200284, this Contract Agreement and the vendor's quote dated July 17, 2006. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.

Estimated Contract Value: **\$3,045,529.00**

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

**CONTRACT NO. 071B6200426
 between
 THE STATE OF MICHIGAN
 and**

| | |
|---|--|
| NAME & ADDRESS OF VENDOR Tax Management Associates, Inc. 2225 Coronation Boulevard Charlotte, NC 28227 | TELEPHONE (704) 847-1234 Richard Cooke, Sr. VENDOR NUMBER/MAIL CODE BUYER/CA (517) 241-1647 Irene Pena, CPPB |
| Contract Compliance Inspector: David Buick Resident Redemption Audits – Department of Treasury | |
| CONTRACT PERIOD: From: September 15, 2006 To: September 14, 2009 | |
| TERMS <p style="text-align: center;">N/A</p> | SHIPMENT <p style="text-align: center;">N/A</p> |
| F.O.B. <p style="text-align: center;">N/A</p> | SHIPPED FROM <p style="text-align: center;">N/A</p> |
| MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p> | |
| MISCELLANEOUS INFORMATION: <p>The terms and conditions of this Contract are those of ITB #071I6200284, this Contract Agreement and the vendor's quote dated 07/17/2006. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.</p> <p>Estimated Contract Value: \$3,045,529.00</p> | |

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the ITB No. 071I6200284. Orders for delivery may be issued directly by the Department of Treasury through the issuance of a Purchase Order Form.

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

| | |
|--|--|
| <p>FOR THE VENDOR:</p> <p style="text-align: center;">Tax Management Associates, Inc. _____ Firm Name</p> <p style="text-align: center;">_____ Authorized Agent Signature</p> <p style="text-align: center;">_____ Authorized Agent (Print or Type)</p> <p style="text-align: center;">_____ Date</p> | <p>FOR THE STATE:</p> <p style="text-align: center;">_____ Signature Elise A. Lancaster, Director _____ Name/Title Purchasing Operations _____ Department</p> <p style="text-align: center;">_____ Date</p> |
|--|--|



Article 1 – Statement of Work (SOW)

1.0 Project Identification

1.001 PROJECT REQUEST

The purpose of this Contract is to provide the services of a Contractor, to act as the authorized representative of this State, design an audit methodology, and then conduct audits of principal residence exemptions within the 30 counties in which this State is responsible for conducting such audits during calendar years 2006, 2007 and 2008. Those counties are as follows: Alpena, Barry, Bay, Branch, Clare, Dickinson, Eaton, Emmet, Genesee, Hillsdale, Huron, Iosco, Iron, Jackson, Kalamazoo, Kalkaska, Lake, Luce, Mackinac, Macomb, Manistee, Mason, Monroe, Oceana, Oscoda, Roscommon, Sanilac, Shiawassee, Tuscola, and Wayne.

1.002 BACKGROUND

Public Act 206 of 1893, the General Property Tax Act, provides an exemption from the 18-mill local school district operating tax for property that is owned and occupied by an owner as his or her principal residence (MCL 211.7cc). An owner may claim a principal residence exemption by filing an affidavit with his or her local tax-collecting unit of government (city or township) by May 1st of a given year. The exemption then is effective until the December 31st of the year in which the property ceases to be owned or occupied as the exemption claimant's principal residence.

For purposes of the General Property Tax Act, a principal residence is the one (1) place where a person has his or her true, fixed, and permanent home to which, whenever absent, he or she intends to return. Second homes, vacation homes, rental property, and that portion of mixed-use property not owned and occupied as a principal residence are not entitled to exemption. To ensure that an individual does not claim more than one (1) exemption, or does not claim an exemption upon ineligible property, the local assessor with whom an affidavit is filed may deny a new or existing exemption subject to the right of an owner to appeal that denial to the Michigan Tax Tribunal.

In 2003, the Michigan Legislature amended the General Property Tax Act to authorize counties to audit and, where appropriate, to deny principal residence exemptions claimed within units of local government within a given county. A decision by a county to conduct audits must be made by the treasurer or equalization director of the county, with the concurrence by resolution of the county board of commissioners. Such a decision by a county is effective for a two (2)-year period at the conclusion of which the county may elect to extend its status, by October 1st of that year, for a subsequent two (2)-year period. In any county electing not to conduct principal residence audits, the Department of Treasury is responsible for doing so.

1.1 Scope of Work and Deliverables

1.101 IN SCOPE

The Contractor shall conduct audits of principal residence exemptions within the 30 counties (see section 1.001) in which this State is responsible for conducting such audits during calendar years 2006 and 2007. The Contractor will need to acquire tax roll information, design and implement a methodology to identify any instances in the current or preceding three (3) calendar years in which an individual claimed, or is claiming, more than one (1) principal residence exemption, or any instances in which an individual has claimed an exemption upon property which is not his or her principal residence, devise and send a questionnaire to individuals, whom it appears upon initial review by the Contractor have claimed more than one (1) exemption, or whom have claimed an exemption upon property which is not his or her principal residence, collect information from the questionnaire, determine the appropriateness of the exemption, and provide the necessary reports to ensure all statutory requirements have been satisfied.

1.102 OUT OF SCOPE

Database development for the State is not a part of this Contract and will be issued in a separate RFP.

1.103 ENVIRONMENT

Information technology (IT) standards are referenced in section 2.051; additionally, the State's desktop suite standard is Microsoft Office (see policy 1310.22 [Desktop Suite Standard] at http://www.michigan.gov/dmb/0,1607,7-150-9131_9347-28166--,00.html).



1.104 WORK AND DELIVERABLE

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

1. Acquire from tax roll information the taxpayer name, property address, tax-billing address, parcel identification number, legal description, classification, percentage of principal residence exemption, and taxable value for each parcel of property upon which such an exemption is claimed. The Contractor shall be responsible for arranging, scheduling, and securing access to all offices of county or unit of local government officials and to all records, papers, and documents maintained by those officials, which are necessary to perform the tasks required under this Contract. This task will commence after the State Equalization has taken place, but must commence as soon as the Contract is in place and then no later than June 15th for subsequent Contract years.

Contractor Response to Task:

In preparation for gathering the base data from County Equalization Directors, Tax Management Associates, Inc. (TMA) will make a concerted effort in the initial Contract period of apprising the local units of government of the project goals and our needs. The Department of Treasury will need to send out a letter to each Equalization Director and his/her staff stating the relationship between the Department and TMA, what will be needed from their office, and the time frame in which the data should be prepared for export. TMA will make all arrangements with local offices to secure the data, including providing technical support for data transfer, scheduling appointments with local staff and offices, and ensuring that all information required for the project is obtained from local units of government. TMA maintains the use of the BS&A Equalizer system in house to facilitate the data transfer. TMA will also have to become familiar with all other assessment software services offered to Michigan jurisdictions. Then, TMA can produce a memo with detailed export instructions based on the system in place and distribute these to the counties. During the distribution process, TMA will also make contact with the Equalization Director and his/her staff to inform them of the project and what might be needed. In each case, TMA will try to send someone to the Equalization Director's office in order to walk through the process with staff in order to ensure data quality.

Data gathered from local units will include most information related to each real parcel and contained within the assessment software. This information will have to be re-segregated in tables according to TMA database protocols and, in particular, to fit with the table structure designed for the pertinent queries and output applications (from mailings to reports). This information will include all of the following for each parcel, but may not be limited to:

1. Parcel Identification Number
2. Property Address: Street Number, Street Name, City, County, State, Zip-Code
3. Owner Information: Last Name, First Name, Middle Name, Owner's Street Number and Street Name, Owner's City, Owner's State, Owner's Zip-Code
4. Co-Owner Information: (same as above)
5. Property Type: Property Class
6. Assessed Value
7. Taxable Value
8. PRE Information: Principal Residence Exemption Binary (filed or not-filed), PRE Date Filed, PRE Percentage
9. Sales Information: Last Sale Date, Purchaser Last Name, Purchaser First Name, Purchaser Middle Name, Tax Bill Information (Current +2 previous years): Last Paid Date, Total Bill Amount, Mill Rate.

- a. Contractor must comply with Safeguard Requirements of Confidential Data.

Contractor Response to Task:

As outlined, all Safeguard Requirements of Confidential Data will be adhered to as they relate to the specific parameters of this project. The most pertinent of these will be;

- 1) limiting access to Michigan taxpayer information to only those employees actively involved in working on the project;
- 2) ensuring that those employees are aware and abide by the confidentiality requirements outlined in the document and as a normal course of business when working with taxpayer records; and
- 3) ensuring that electronically stored data is secured within standards sufficient and reasonable to assume the protection of the data through the end of the life of the project.

These standards of conduct are outlined in more detail in the following paragraphs as they relate specifically to conditions specified in the Safeguard Requirements document.

All employees of TMA will be bound by the confidentiality agreements held with Treasury, as they are also bound by TMA standards of conduct outlined in internal materials. All employees assigned to the project will sign Michigan Form 3337 as a condition of continued participation on the project.



All raw data will be held in TMA databases located at the corporate headquarters in Charlotte, North Carolina. The building has a security system, which is monitored when no one is present in the building, including magnetic locks, which prevent unauthorized access to the building during normal operating hours. All employees hold magnetic keys, and any entry during off hours is electronically recorded. The database server will be housed in a private office location, access to which is permitted only to the database administrator and Project Managers. All disks and other storage devices will be kept in this location, both removable media as well as system media. This location will be kept under lock and key when not actively in use during business hours.

Data transfer from local government sources or state departments will occur by physical media only, and then only under the guidance of TMA personnel or private insured carrier. All media and/or paper records will be sealed and packaged prior to shipping, and marked as confidential data. The data from these physical media will be uploaded to the TMA database in house, protected as described herein, and the physical media will be stored under lock and key. After the termination of the project, all physical media will be destroyed appropriately, and the TMA database will be erased in a manner consistent with the guidelines of the Safeguard Requirements.

During the term of the project, all data will reside on the TMA database. No Internet access will be provided to this database, and no information transfer will occur by any other means. There will be no other transmission possibilities. A username and password security system will be used to limit access to the database. Users will have limited access to the data according to their level of involvement. This will mean that only the database administrator and key Project Managers have unlimited access to records contained in the database, and all others will only have access to reporting applications per their assigned tasks. All paper reports will be held in the offices of TMA personnel assigned to the project, strictly not to leave the building. Access to the paper reports and printouts of information related to the project will be secured from unauthorized access by means of project assignment, lock and key, and restricted access, and any raw information that allows the identification of Michigan taxpayer information will be marked as follows:

CONFIDENTIAL – MICHIGAN TAX RETURN INFORMATION
Protect at all times. Do not Disclose. MI tax information is exempt from
disclosure under the Freedom of Information Act.

TMA will work with the Contract Compliance Inspector to ensure that all levels of security and safeguarding of confidential information meet the requirements of Treasury and the Michigan confidentiality statutes. TMA will open its offices to inspection by the Contract Compliance Inspector, and will periodically review with that person the security policies in place. These policies will meet or exceed the standards outlined in Appendix A, and continued monitoring will allow TMA to respond to any changes in needs or definitions which arise for the purpose of safeguarding Michigan taxpayer information.

2. Devise and employ a methodology which will permit the Contractor, and eventually the State, to identify any instances in any 4-year period, including specifically in the first instance, the current or preceding three calendar years in which an individual claimed, or is claiming, more than one principal residence exemption in the State or in this State and another state of the United States, or any instances in which an individual has claimed an exemption upon property which is not his or her principal residence.

Contractors will not have access to income tax and social security number data from the State. Based on a Contractor's proposal, the Department will work with the Contractor and State agencies to acquire access to State databases.

Contractor Response to Task:

The PRE, or Homestead exemption, is statutorily defined by MCL 211.7cc. This section of the Michigan Code states that a PRE may be claimed only for a "property owned and occupied as a principal residence by that owner of the property." Sub-section 16 extends this to multiple unit dwellings only to the extent that "an owner shall claim an exemption for only that portion of the total taxable value of the property used as the principal residence." The exemption is extended also to contiguous parcels without structures, adjacent to and owned by the same person claiming a PRE on a principal residence as part of the same property.

Sub-section 3 covers the conditions, which limit those people who are entitled to the PRE. These conditions include:



- A husband and wife who file a joint Michigan income tax return are entitled to only one exemption
- A person may not claim a similar exemption in any other state
- A person must not file a Michigan non-resident income tax return
- A person must not file an income tax return as a resident in any other state
- A person must not file a PRE for more than one property in Michigan in the same tax year

According to U.S. Census materials (2004), there are 4,433,482 housing units in the state of Michigan. The thirty counties for which the review is requested comprise 2,103,687, or 47.45%, of this number. These are, of course, approximations as the census data is old and subject to yearly increases due to new construction and other factors. It is proposed that TMA will utilize one other major data resource, which will be the Michigan Driver's License records. This database will include approximately 7,750,000 records or more. The option of using the Michigan Income Tax information will continue to be explored if confidentiality requirements can be secured.

Driver's license records are maintained under the Secretary of State Customer Services Administration in the Bureau of Driver and Vehicle Records. Gaining access to these records will have to be coordinated through Treasury at the outset of the audit program. If these records are restricted or otherwise inaccessible, the project will be severely handicapped and may not follow the following outline and protocols.

The number and type of records involved requires a relational database system be used to compile and query the records. This is an SQL-type database, which can be used to store, organize, and manipulate enormous amounts of data. An invaluable part of the project plan will be the pre-design of the database architecture. The design side of the database is critical as this will impact how much can be derived from the information available.

The project as a whole can be defined by the following four stages. These stages will occur on an annual basis, beginning after the State Equalization, approximately in June, and continuing through May of each year. Deliverables will be staged during this period, with reports on invalid PRE results emerging as the data allows. There will be at least four distinct points when process or data deliverables are presented to Treasury and pro-rata payment made for services rendered. The stages are summarized as follows:

Data Collection

- I. Data Sort and Query
- II. Questionnaire Send-Receive and Data Entry
- III. Final Reports to Treasury

I. Data Collection:

Data collection will follow the parameters outlined in § 1.104.1

II. Data Sort and Query:

Data collected from the eighty two Michigan counties will be compiled in a database designed to test the validity of PRE filings based on criteria as outlined in MCL § 211.7cc. This means that the data will be translated into a SQL database through the logical structuring of component data into tables such that the validity tests will identify any broken rules apparent from the data in hand. Because of the limitations currently in place – notable the lack of access to Michigan taxpayer Social Security numbers and Michigan Income tax information – not all of the applicable parameters will be able to be tested. However, the project will be a thorough overview of PRE requirements for all parcels located within the thirty target counties.

The database tables will allow for a segregation of the given data into identity tables, tagging particular owners and particular parcels as unique and as related to each other. Therefore, the queries, or those applications and reports, which will be run against this database, will use the identity information to question the data against those PRE conditions, which validate particular parcels. These queries will be staged logically to locate the most accessible de-validating criteria first. Then, subsequent queries will be used to access more obscure relations which devalidate PRE conditions, but which might require follow-up information, or which will place a parcel and owner relationship into a condition which requires the sending of a questionnaire.

From the information gathered from the targeted thirty counties, all basic criteria can be tested through the initial database query. These conditions include, but may not be limited to:

- If the parcel is a single family residence
- If multi-dwelling parcels are receiving the PRE at the correct percentage
- If the PRE was taken after the sale date of the parcel, indicating correct filing procedures
- If the parcel is owned by an individual(s) and not by a company, trust, LLC or other invalid owner
- If the billing and mailing addresses associated with the parcel are the same



Some of these conditions will devalidate PRE's filed on those parcels. These results will push to a report status. Reports will be produced which include the parcel identification information, the owner identification and contact information, and the reason and evidence for the PRE revocation. Other conditions will flag a parcel for follow-up in the next query stage. These conditions, when fulfilled, will not necessarily require PRE revocation, but will require more information to determine the status of the PRE.

After all information has been gathered from the eighty two Michigan counties, queries will again be run against the aggregate data. These queries will in some part be based on the results of the previous queries, but also independent. The aggregate data queries will allow TMA to test the following conditions as well as others, which might appear relevant:

- If an owner appears on more than one property in the state of Michigan
- If an owner or co-owner shares ownership of more than one property in Michigan

Michigan Driver's License (MDL) information will be compared against the query at this stage to establish an owner's primary residence. The MDL data will be critical to establishing identity as well as validating primary addresses and establishing in-state residence. Properties owned by individuals without a MDL will automatically be considered out-of-state, and will have to respond to the questionnaire stage of the audit process.

Once again, based on the results from both query sets, reports will be generated for Treasury. These reports will include any property, which has broken one of the statutory requirements for holding a PRE on a parcel. However, also at the end of the second query will be a resulting list of parcels and owners who appear to either 1) own multiple properties for which more than one is being claimed as a primary residence; 2) married couples who are filing PRE's on multiple properties but who own these properties independently; and 3) owners who appear to be residing out of state part or all of the time but who still claim a PRE on one or more properties.

III. Questionnaire Send-Receive and Data Query

In order to address the last set of three circumstances, questionnaires will have to be produced and sent to those corresponding owners.

IV. Final Reports to Treasury

The information collected from these questionnaires will be incorporated into the database and reports to produce a final list of PRE's, which have been determined to fail to meet the statutory requirements and should therefore be revoked. All reports given to treasury throughout the PRE audit process will contain the following information:

- The number of years an invalid PRE has been claimed on the property
- The property's assessed value for these years
- The owner(s)' contact information
- The Property location and Property Identification Number

The final report will be turned into Treasury at the end of the program year, on or around June 1st. Every December, TMA will meet with the Contract Compliance inspector to review the progress of the project, needed enhancements, or other issues that have arisen as part of completing the project. A similar meeting should be scheduled after the preparation and submission of the final reports in June. This second meeting will also allow TMA and the Contract Compliance Inspector an opportunity to coordinate efforts on the acquisition and distribution of information for the coming project year.

3. Devise and mail a questionnaire to each individual whom it appears upon initial review by the Contractor has claimed more than one exemption, or who has claimed an exemption upon property, which is not his or her principal residence. The purpose of the questionnaire is to collect information necessary to permit the Contractor to determine with specificity the appropriateness of the exemption. The Contract Compliance Inspector must review and approve the questionnaire before it is sent. The Contractor will be responsible for responding to technical questions relating to the audit and questionnaire from individuals it contacts as part of the audit. Other questions (statute interpretation and policy) will be handled under guidance by the Contract Compliance Inspector.
 - a. Contractor will be working as a "behind the scenes data facilitator" for the Department. All mailings will be on Treasury letterhead.

**Contractor Response to Task:**

Based on the queries and protocol listed in the proceeding sections, certain properties will be identified in the PRE audit process, which fail to meet certain requirements. For any properties showing the same or similar owner or co-owner information, or for which the primary residency is in doubt, a questionnaire will have to be produced and sent to the property address. The questionnaire (an example is given below) will require the taxpayer to provide confirmation of existing information and additional information to ensure that the property on record is the primary address of the taxpayer. Questionnaire results will have to be collected by TMA staff and entered into the database for a final report to Treasury of any invalid homestead exemptions.

The questionnaire would be dated, and returned receipt of requested information would be given a forty-five day period from date of letter. Statutorily, taxpayers are given thirty days to respond to requests of this type, and the forty-five day window will allow for mail delays, vacations, or other valid reasons for the taxpayer not to receive the mailing in a timely manner. The date the questionnaire is mailed out will be noted and kept so that an "over forty-five day" report can be generated for Treasury use.

It is suggested that the questionnaire will be mailed out in staged gradations, county by county, over a period reflective of the overall project goals. This allows TMA to field phone calls and other enquiries in a manner, which devotes attention to the taxpayers, and allows for a competent level of public relations. As a "behind the scenes data facilitator" TMA will maintain a low profile with Michigan taxpayers involved in the PRE audit process. Therefore, the staged mailings will also ensure that Treasury has the manpower to handle taxpayer enquiries.

The questionnaire will be designed by TMA, and the information included in the final sort of PRE filings, but the questionnaire will be mailed and received by Treasury. TMA produced information will be provided to Treasury to allow for a mail merge for the purpose of generating the letters and envelopes. The questionnaire and cover letter will take the following format:

Envelope Marked:

**OCCUPANT OF THIS ADDRESS MUST OPEN IMMEDIATELY
TIME SENSITIVE MATERIALS ENCLOSED**

Treasury Department Letterhead

Date

Taxpayer

Property Address

City, MI Zip

RE: Homestead Exemption on Property Address
Parcel Number XX-XX-XX-XX

Dear Taxpayer,

The records of your local tax assessor office indicate that you are currently receiving an exemption on part of your real estate taxes at the above-mentioned address. The Homeowner's Principal Residence Exemption is intended to reduce the tax bill on a property, which is claimed as being the sole primary residence of a Michigan resident. The law, which governs this tax exemption, known as a Homestead Exemption or a Principal Residence Exemption (PRE), is contained in the Michigan Compiled Laws section 211.7cc. This law requires that certain criteria be met in order to qualify for this exemption.

Our records for the property listed above indicate that you have been receiving the Homestead Exemption for this property as your principal place of residence. In order to verify this information, we are asking you to complete this questionnaire and return to our office as soon as possible. The Michigan Compiled Laws require that you provide this information within thirty days of receipt of this request if you are to continue receiving this exemption. Failure to respond to this request will result in the automatic withdrawal of your homestead exemption, and will require you to re-file for the exemption with your local assessor.



Please take a moment and answer all of the following questions as completely and accurately as possible. We are also requesting that you include with the returned survey a copy of a valid Michigan driver's license. If you do not maintain a Michigan Driver's License, you may return your most recent bank statement showing your name and the property address. Please do not include any financial information, or make sure to black out such information that might be visible. This information is for our purposes only, and will not be shared with other departments or outside parties. If you have any questions regarding this information request, or if you need to speak with someone regarding your Homestead exemption, please call the Treasury Department at (XXX) XXX-XXXX.

If you are not the principal owner of this property, please respond to the following section and return to the Treasury Department immediately.

Name of Person Responding _____

I live at the above-mentioned address. I am a ___ renter ___ property manager ___ other (please provide _____) at the same address.

Phone: _____ Email _____

Date: _____ Signature: _____

Please type or print clearly:

Names of the Property Owners: _____

Relationship of the Property Owners:

___ Married ___ Siblings ___ Partnership, Corporation, Trust, or LLC ___ Other: _____

Owner Name Michigan Driver's License Number

Address as it appears on the MI Driver's License

Street Address _____

City _____ Zip-Code _____

Co-Owner Name Michigan Driver's License Number

Address as it appears on the MI Driver's License

Street Address _____

City _____ Zip-Code _____



Do you own any other property in the state of Michigan? _____ Yes _____ No

If yes, please provide the address of the property below:

Street Address _____

City _____ Zip-Code _____

Do you own any property in any state other than Michigan? _____ Yes _____ No

If yes, please provide the address of the property below:

Street Address _____

City _____ Zip-Code _____

Owner Contact Information:

Phone: _____ Email: _____

Signature of Owner: _____ Date: _____

Signature of Co-Owner: _____ Date: _____

4. Contractor must submit identification of principal residence exemptions ready to be denied to the Contract Compliance Inspector by December 31st of each Contract year. The list will have been verified and validated for incorrect exemptions after completing the audit process in sections 1.104.1 through 3. A hardcopy list and Microsoft Excel file must be provided. The list must contain the following:
 - a. Resident Name
 - b. Resident Address
 - c. Parcel Identification Number
 - d. Legal Description
 - e. Reason Description for Denial
 - f. Percentage of Exemption Denied
 - g. Documentation to Support (applies only to hardcopy list).

Contractor Response to Task:

For each annual cycle of the PRE audit program reports will be generated after each stage of the project summarizing the results, which indicate the denial of homestead exemptions. In each annual audit cycle this will result in at least three substantive reports, which will be returned to Treasury as part of the PRE audit program. An excel or other electronic report will be produced for the Contract Compliance Inspector in each case, based on his request for information type and format, as well as a hardcopy printout of the information. TMA will facilitate the information to produce a format, which serves the best uses of Treasury and their subsequent needs of notifying the local jurisdictions and taxpayers.

The first set of reports will be based on the initial query of data collected from the thirty target counties. This report will include any erroneous filings based on the types of property, incorrect percentage Per's, if an individual or individuals, and the like do not hold ownership. This report will detail the property, its location, and the owner's information, as well as the reason for denying the PRE. Furthermore, these reports will include the years that a PRE has been taken on the subject property and the assessed values for those years.

The second report will be based on the information query related to all eighty-two Michigan counties. This information will be prepared for the purpose of sending out the questionnaires. The information contained in this report will include the number of questionnaires to send and the reasons for each additional need for information. Along with providing Treasury with the information necessary to send out the questionnaires, this document will act as a progress report to notify Treasury of the number and types of reviews in progress.



The third report, which will be produced at the end of the audit cycle in or around June of each year, will contain all of the updated information garnered from returned questionnaires. This information will target those properties, which are indicated as either being owned by out of state persons, or multiple properties owned by Michigan taxpayers. Like the former reports, these will include the property information, owner contact information, years for which the PRE is under review, and the assessed values of the property for the same years. This report will be considered the final review of PRE audits for that program cycle and will be considered the final deliverable for that program year. All of the above mentioned reports would include at minimum the following data:

- Property Identification Number
 - Property Address
 - Owner(s) Name(s)
 - Owner(s) Contact Information
 - Reason for PRE Denial
 - Number of Years PRE has been taken wrongfully
 - Assessed Value of Property for all applicable years
 - Percentage of PRE to be Denied
 - Supporting Reasons for Denial
5. Provide the Contract Compliance Inspector upon his or her request, and in a format specified by him or her, copies of any data or documentation necessary to permit the Contract Compliance Inspector to ensure that all statutory requirements have been satisfied, including the filing of reports with the Legislature.

Contractor Response to Task:

All TMA PRE audit project staff assigned to the project will be accessible to Treasury staff and the Contract Compliance Inspector on an “as requested” basis. The Project Manager and the Database Administrator will be able to produce reports for the Contract Compliance Inspector on request, and within a reasonable period of time.

6. At the conclusion of the annual audit cycles, the Contractor must meet with the Contract Compliance Inspector and review the audit process/work plan (see section 1.301.4) to identify lessons learned and best practices for continuous improvement.

Contractor Response to Task:

TMA encourages Treasury and the Contract Compliance Inspector to meet annually to review the audit progress and work plan “to identify lessons learned and best practices for continuous improvement.” It is the suggestion of TMA that these meetings occur more often than annually, and as often as is feasible given the restraints of the project timelines and availability of the Contract Compliance Inspector. However, at minimum, TMA would suggest meetings at the Treasury department with integrated project staff there 1) when reports are prepared and ready for submission to Treasury, 2) annually per the ITB requirements, 3) as conditions with local units of government warrant, particularly during the information gathering process, and 4) as needed during the audit cycle to identify best practices and to allow for full disclosure between TMA project staff and Treasury.

1.2 Roles and Responsibilities

1.201 CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES

Contractor must provide a Project Manager to act as a central point of contact for all Contractual activities. Identify Contractor staff who will be involved, identify by name the individuals, and describe in detail their roles and responsibilities. Descriptions of roles should be functional and not just by title. Include an organization chart in Article 1, Attachment B.

Contractor Response to Task:

TMA project staff has been identified as follows. Project staff may be added as needed given the time constraints and manpower required meeting all deadlines and requirements of the Contract. TMA maintains approximately one hundred employees company wide in offices throughout the United States. TMA’s Brighton, MI office will be able to provide in-state support to the project on an as needed basis. A brief description is given for the roles and responsibilities of each project team member:



| | |
|------------------------------|---|
| <p>Mark C. Cooke</p> | <p>Project Manager and State Contract Liaison: Mark's central role will be in providing day to day project overview and compliance with the requirements of the state Contract. Mark will be responsible for providing Treasury with reports as outlined herein as well as information as requested.</p> |
| <p>Richard H. Cooke, Jr.</p> | <p>Project Manager: Chip's central function in the PRE audit project will be to manage day to day operations and insure compliance with the requirements of the state Contract. Chip's management of previous Treasury Contracts as well as elsewhere will provide support to the overall work product and add to the quality of the deliverable.</p> |
| <p>Robert O. Vandermark</p> | <p>Local Unit Coordinator: Bob's primary role in the PRE audit project will be coordinating information between TMA and the local units of government. Bob will ensure that information is delivered to TMA on a timely basis to meet the expectations and needs of the audit project.</p> |
| <p>Terry L. Rowland</p> | <p>National Sales Director: Terry's project role will be in the coordination of efforts with local units and Equalization Directors to collect and compile real parcel information. Terry has developed and maintains relationships with numerous local government officials, which will aid in the communication and information flow between the TMA project team and government entities.</p> |
| <p>Rod Yow</p> | <p>Database Administrator: Rod will design and implement the database architecture used to query the data. He will also be responsible for writing the reporting applications and ensuring that the data is utilized to its most efficient ends. Rod will also act as technical support to the local units in managing the Equalizer and other assessment software exports to the TMA database.</p> |
| <p>Alfonso Consiglio</p> | <p>Brighton Office Manager: Al's primary duty will be to provide management and support to the PRE audit program by assigning and overseeing tasks related to the project. Personnel will be drawn from the Brighton office location on an as needed basis for the purpose of responding to taxpayers and data entry from returned questionnaires. The Brighton office also offers a centralized support center to the PRE audit project in the state of Michigan.</p> |

1.202 STATE STAFF, ROLES, AND RESPONSIBILITIES

Contract Compliance Inspector (see section 2.015) will provide overall project management for the State on a day-to-day basis.

1.203 OTHER ROLES AND RESPONSIBILITIES

Local units of government for acquiring tax roll information (see section 1.104.1).

1.3 Project Plan

1.301 PROJECT PLAN MANAGEMENT

1. The Contractor will carry out this project under the direction and control of the Contract Compliance Inspector.
2. Although there will be continuous liaison with the Contractor team, the Contract Compliance Inspector will meet quarterly as a minimum, or as requested by the Contract Compliance Inspector, with the Contractor's Project Manager for the purpose of reviewing progress and providing necessary guidance to the Contractor in solving problems which arise. A quarterly activity report must be provided that includes the following, broken down by county and in total:
 - a. Total Number of Principal Residence Exemption Parcels
 - b. Number of Parcels Reviewed,
 - c. Number of Exemptions Accepted
 - d. Taxable Value of Parcels for Exemptions Accepted
 - e. Number of Exemptions Denied in total (100%)
 - f. Number of Exemptions Denied in partial (< 100%)
 - g. Taxable Value of Parcels for Exemptions Denied
 - h. Anticipated Additional Tax Revenue from Denials

**Contractor Response to Task:**

The TMA PRE Audit Contract Liaison and Project Manager will meet with the Contract Compliance Inspector quarterly as a minimum. Meetings will be held to review progress on the overall PRE audit project and to discuss problems or complications. TMA will advise the Contract Compliance Inspector of problems or issues as they arise, but the meetings will be used to handle issues that have yet to be resolved or which affect the overall scope of the project. TMA would suggest that meetings might be held more often to provide the Contract Compliance Inspector with detailed progress reports specific to the pertinent project goals at that moment. However, the quarterly meetings will be used to address the overall project, its progress, and any further planning or requirements necessary to ensure the success of the program.

At the quarterly meetings with the Contract Compliance Inspector, the TMA Project Lead will provide a report which details the progress of the project including:

- a. The total number of principal residence exemption parcels identified in the thirty target counties
- b. The number of PRE parcels reviewed for those thirty counties, including the query results and progress of data acquisition from the counties
- c. The number of PRE parcels found to be in compliance with MCL 211.7cc regulations
- d. The taxable value of PRE parcels found to be in compliance
- e. The number of exemptions found or thought to be suspect under one or more rules
- f. The number of exemptions found to be incorrectly filed due to percentage claimed
- g. The total taxable value of the PRE parcels thought to be incorrectly filed the anticipated tax revenue from the PRE denials and back taxes due to erroneous or incorrectly filed homestead exemptions.

3. The Contractor will submit brief written monthly summaries of progress which outline the work accomplished during the reporting period; work to be accomplished during the subsequent reporting period; problems, real or anticipated, which should be brought to the attention of the Contract Compliance Inspector; and notification of any significant deviation from previously agreed-upon work plans.

Contractor Response to Task:

Monthly, or more often if necessary, TMA will communicate to the Contract Compliance Inspector the progress made on the pertinent portion of the PRE audit program. This monthly report will include progress made on the concurrent portion of the audit program and any complications that may have arisen since the last report. Any changes thought necessary to the overall PRE audit program or its goals would be communicated to the Contract Compliance Inspector for recommendations and discussion. The final part of each monthly update will be a synopsis of the expected accomplishments in the next month, including any changes to the work plan, which will need to be implemented.

4. Within five (5) working days of the award of the Contract, the Contractor will submit to the Contract Compliance Inspector for final approval a detailed audit process/work plan. This final implementation plan must be in agreement with Article 1, Attachment C as proposed by the Contractor and accepted by the State for Contract, and must include the following:
 - a. The Contractor's project organizational structure.
 - b. The Contractor's staffing table with names and title of personnel assigned to the project. This must be in agreement with staffing of accepted proposal. Necessary substitutions due to change of employment status and other unforeseen circumstances may only be made with prior approval of the State.
 - c. The project breakdown showing sub-projects, activities and tasks, and resources required and allocated to each.

Contractor Response to Task:

Within five working days of the award of the Contract, TMA will submit to the Contract Compliance Inspector for final approval a detailed audit process/work plan. The final version of the work plan will be in agreement with Article 1, Attachment C, as submitted herein. Any deviations from that work plan, or from the organizational structure as described throughout this Contract will be communicated to the Contract Compliance Inspector. Changes may be unavoidable and necessary, but will not impact the overall conception of the PRE audit program or the deliverables associated with the project. TMA, under such circumstances, will seek the approval of the Department of its new parameters, if they were to occur, prior to beginning work on the project.



The work plan submitted after the award of the Contract will include TMA's project organizational structure, including a staffing table with the names and titles of personnel assigned to the project. The work plan will also include a breakdown showing project cycles, sub-projects, activities and tasks, and resources required for each. The plan will be a best-case scenario project based on the anticipated conditions as outlined in the Contract. Changes occurring due to unknown, undisclosed, or new information will be incorporated on an as needed basis and discussed and communicated with the Contract Compliance Inspector in a timely and efficient manner. The ultimate goal will be the successful completion of the project within the parameters as they are outlined in this Contract, and with full disclosure from TMA and its project team to Treasury as to the best means to meet these requirements and objectives.

5. Contractor must submit an audit process/work plan annually to the Contract Compliance Inspector by March 1st of successive Contract years. The audit process/work plan for the first year of the Contract will be required as stated in the above section 1.301.4. Commencement of work will be authorized via a Purchase Order release from the Contract (see sections 2.013 and 2.061). Contractors must submit a sample audit process/work plan with their proposal in Article 1, Attachment C.

Contractor Response to Task:

Annually, by March 1st of each program year, TMA will submit an updated work plan to Treasury through the Contract Compliance Inspector. This work plan will incorporate any changes made to the previous years PRE audit protocol based on new information or best business practices discovered as a course completing the first year's PRE audit cycle. Changes will be noted in the new audit plan, and notes may be attached to show conversations with the Contract Compliance Inspector or other agent that influenced the changes to the overall PRE audit program or the deliverables associated with that project.

It is understood that the commencement of work will occur after the issue of a Purchase Order for such work, and that said Purchase Order would bind the Contractor in its deliverables.

1.302 RESERVED

1.4 Project Management

1.401 ISSUE MANAGEMENT

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

Contractor Response to Task:

Issues will be communicated to the Contract Compliance Inspector through the TMA Project Manager as they arise. Issues directly impacting the performance of the contract will be addressed immediately, particularly if Treasury relates the problem to a perceived need of intercession in relation to a local unit or taxpayer. Otherwise, issues and progress will be addressed monthly as outlined in this Contract, quarterly as described herein § 1.301.2, annually at the December meeting required by Contract § 1.104.4, and with the submission of the annual work plan on March 1st per § 1.301.5.

1.402 RISK MANAGEMENT

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

**Contractor Response to Task:**

The TMA project management team has the capability to identify, monitor, and mitigate risk on all levels of the project scope and work plan. Risk will be assessed at each stage of the project and as it arises. Risk is defined as any parameter arising during the course of the project, which impedes the ultimate success, and completion of the project as it has been defined in this document. Therefore, risk will be evaluated on a day-to-day basis, based on new information, and addressed appropriately. Risk potentials will be communicated internally and risk mitigation protocols instituted to alleviate the risk factors. In each case, whether resolution has been successfully achieved or not, the TMA project manager will address risk factors, the plan for mitigation, and probable outcomes to the Contract Compliance Inspector for his knowledge and review. Risk factors associated with TMA business strategies or internal workings will be handled internally and successfully to the benefit of the company and the project. External risk factors associated with the project, the state of Michigan, the Treasury, the local units, or taxpayers will be integrated into a consultation with the Contract Compliance Inspector and a plan of action will be coordinated with the necessary and appropriate parties.

1.403 CHANGE MANAGEMENT

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

Vendors who provide products or services prior to the issuance of a Contract Change Notice by the DMB Office of Purchasing Operations, risk non-payment for the out-of-scope/pricing products and/or services.

1.5 Acceptance**1.501 CRITERIA**

Acceptance of the Services and/or Deliverables provided under this SOW will be determined by completion of deliverables by the calendar/timeline in section 1.104.

1.502 FINAL ACCEPTANCE

Final Acceptance is when identification of principal residence exemptions ready to be denied are submitted to the Contract Compliance Inspector by December 31st of each Contract year and all requirements of the Contract are met (see section 1.104).

1.6 Compensation and Payment**1.601 COMPENSATION AND PAYMENT**

This Contract is a firm, fixed price Contract. Pricing will be based on a cost per county basis. Payment/invoicing for this Contract will be as follows:

1. 25% of the county cost will be paid upon completion of sending the questionnaires (see section 1.104.3)
2. 25% of the county cost will be paid upon completion of verifying and validating half of the parcels for principal residence exemptions
3. 25% of the county cost will be paid upon completion of the identification of principal residence exemptions to be denied to the Contract Compliance Inspector by December 31st of each Contract year (see section 1.104.4)
4. 25% of the county cost will be paid upon completion of the audit process/work plan review meeting (see section 1.104.6).

1.7 Additional Terms and Conditions Specific to this SOW**1.701 ADDITIONAL TERMS AND CONDITIONS SPECIFIC TO THIS SOW**

See section 1.104.1.a for Safeguard Requirements of Confidential Data.



Article 1, Attachment A - Pricing

| County | Percent of Total | Cost per County | | | Subtotals |
|------------|------------------|-----------------|----------------|--------------------|-----------------------|
| | | Year 1 | Year 2 | Year 3 | |
| Alpena | 0.76% | \$9,103.01 | \$9,020.01 | \$5,023.00 | \$23,146.02 |
| Barry | 1.19% | \$14,253.40 | \$14,123.43 | \$7,864.96 | \$36,241.80 |
| Bay | 2.31% | \$27,668.37 | \$27,416.07 | \$15,267.28 | \$70,351.72 |
| Branch | 0.99% | \$11,857.87 | \$11,749.75 | \$6,543.12 | \$30,150.74 |
| Clare | 1.11% | \$13,295.19 | \$13,173.96 | \$7,336.22 | \$33,805.37 |
| Dickinson | 0.68% | \$8,144.80 | \$8,070.53 | \$4,494.26 | \$20,709.60 |
| Eaton | 2.10% | \$25,153.07 | \$24,923.70 | \$13,879.34 | \$63,956.11 |
| Emmet | 0.92% | \$11,019.44 | \$10,918.96 | \$6,080.47 | \$28,018.87 |
| Genesee | 9.14% | \$109,475.72 | \$108,477.45 | \$60,408.18 | \$278,361.35 |
| Hillsdale | 1.00% | \$11,977.65 | \$11,868.43 | \$6,609.21 | \$30,455.29 |
| Huron | 1.02% | \$12,217.20 | \$12,105.80 | \$6,741.39 | \$31,064.40 |
| Iosco | 1.02% | \$12,217.20 | \$12,105.80 | \$6,741.39 | \$31,064.40 |
| Iron | 0.44% | \$5,270.17 | \$5,222.11 | \$2,908.05 | \$13,400.33 |
| Jackson | 3.13% | \$37,490.04 | \$37,148.19 | \$20,686.83 | \$95,325.06 |
| Kalamazoo | 4.94% | \$59,169.59 | \$58,630.04 | \$32,649.50 | \$150,449.13 |
| Kalkaska | 0.54% | \$6,467.93 | \$6,408.95 | \$3,568.97 | \$16,445.86 |
| Lake | 0.67% | \$8,025.03 | \$7,951.85 | \$4,428.17 | \$20,405.04 |
| Luce | 0.20% | \$2,395.53 | \$2,373.69 | \$1,321.84 | \$6,091.06 |
| Mackinac | 0.47% | \$5,629.50 | \$5,578.16 | \$3,106.33 | \$14,313.99 |
| Macomb | 15.94% | \$190,923.74 | \$189,182.77 | \$105,350.81 | \$485,457.32 |
| Manistee | 0.71% | \$8,504.13 | \$8,426.59 | \$4,692.54 | \$21,623.26 |
| Mason | 0.80% | \$9,582.12 | \$9,494.74 | \$5,287.37 | \$24,364.23 |
| Monroe | 2.81% | \$33,657.20 | \$33,350.29 | \$18,571.88 | \$85,579.36 |
| Oceana | 0.75% | \$8,983.24 | \$8,901.32 | \$4,956.91 | \$22,841.47 |
| Oscoda | 0.43% | \$5,150.39 | \$5,103.42 | \$2,841.96 | \$13,095.77 |
| Roscommon | 1.15% | \$13,774.30 | \$13,648.69 | \$7,600.59 | \$35,023.58 |
| Sanilac | 1.05% | \$12,576.53 | \$12,461.85 | \$6,939.67 | \$31,978.05 |
| Shiawassee | 1.45% | \$17,367.59 | \$17,209.22 | \$9,583.35 | \$44,160.17 |
| Tuscola | 1.16% | \$13,894.07 | \$13,767.38 | \$7,666.68 | \$35,328.14 |
| Wayne | 41.12% | \$492,520.97 | \$488,029.84 | \$271,770.72 | \$1,252,321.52 |
| Subtotals | 100.00% | \$1,197,765.00 | \$1,186,843.00 | \$660,921.00 | |
| | | | | Grand Total | \$3,045,529.00 |

1. Costs must be all inclusive (i.e. mailings, travel, etc.).

2. Costs for Years 2 and 3 should be lower than Year 1, since Contractor will have start- up and development costs during 1st year that will not be repeated in 2nd and 3rd years, and Contractor will have data from 1st Contract year.



A call center will be established by TMA at an annual rate agreed to by TMA and the State of Michigan. TMA's expected costs for this call center are as follows:

| Year | 2007 | 2008 | 2009 | Totals |
|-----------------------|---------------------|-------------------|-------------------|-------------------|
| Expenses | | | | |
| Call Center | | | | |
| Manager | \$ 54,000 | \$ 54,000 | \$ 54,000 | \$ 162,000 |
| Support (5 people) | \$ 180,000 | \$ 100,000 | \$ 60,000 | \$ 340,000 |
| Office Space | \$ 10,000 | \$ 10,000 | \$ 10,000 | \$ 30,000 |
| Hardware | \$ 9,000 | \$ - | \$ - | \$ 9,000 |
| Misc. Equipment | \$ 5,000 | \$ - | \$ - | \$ 5,000 |
| Total Expenses | \$ 258,000 | \$ 164,000 | \$ 124,000 | \$ 546,000 |
| | Full installed cost | Reduce Support | Reduce Support | |

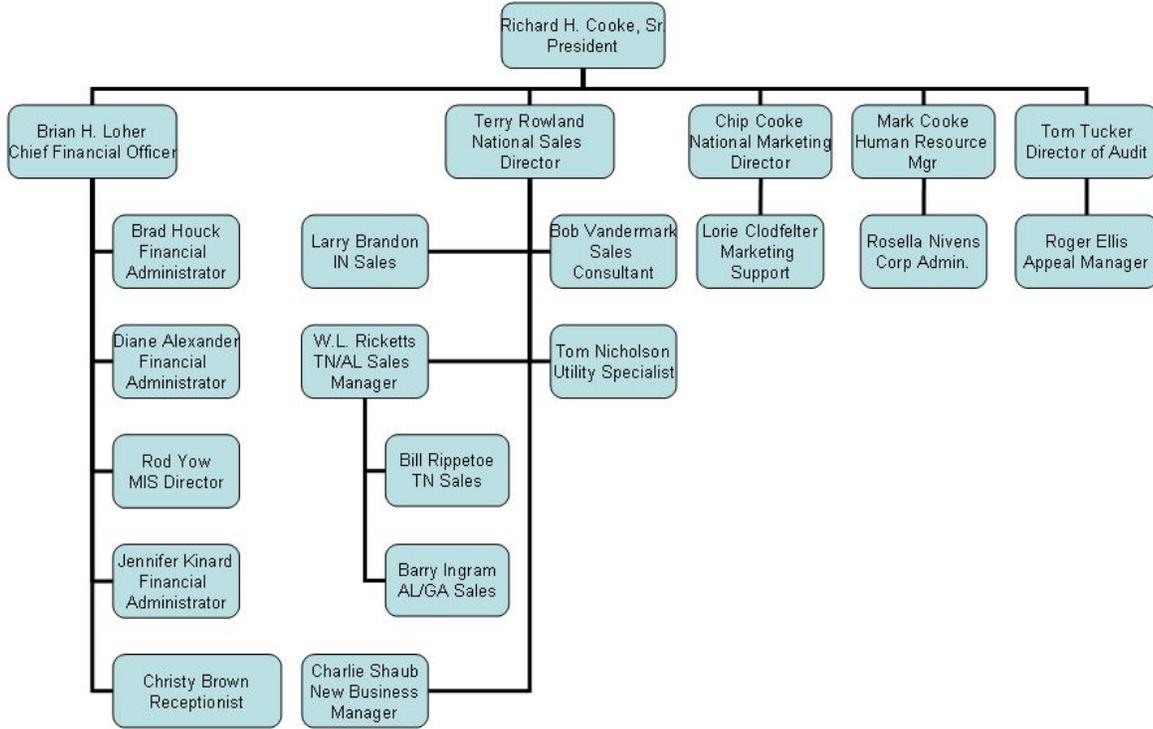
As you can see in the above chart, the new anticipated cost for a call center under the scope of this project are greater than the expected costs delivered in our last correspondence. This is due to an increase in TMA's scope for this project, changing from a "behind the scenes data facilitator" to a fully functioning taxpayer resource, including some aspects earlier thought to be the responsibility of the Department of Treasury.

However, in the spirit of cooperation, TMA agrees to this change in scope and would only ask that it recoups some of its embedded install cost for the call center in PY2 and PY3. TMA requests that the amount of \$270,000, or half of the call center cost, be allocated in equal amounts over PY2 and PY3 (\$135,000 per year). These costs are included in Article 1, Attachment A Total Pricing Amount.



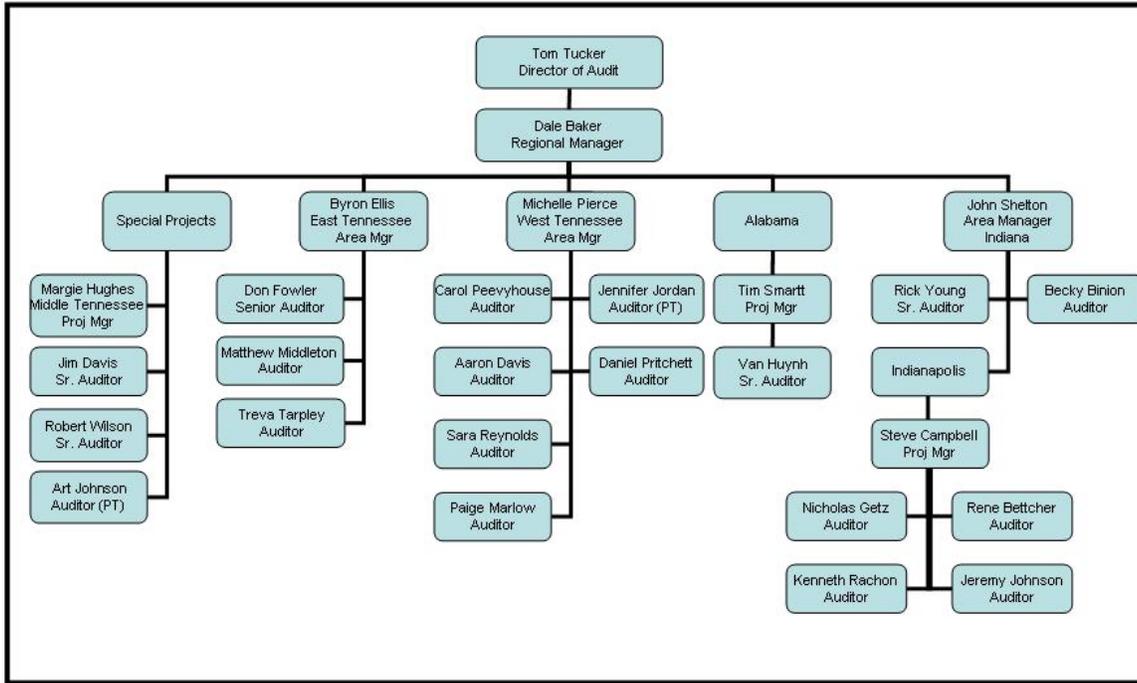
Article 1, Attachment B
Organizational Chart, including Key Personnel

**Tax Management Associates
Corporate Staff
as of June 20, 2006**



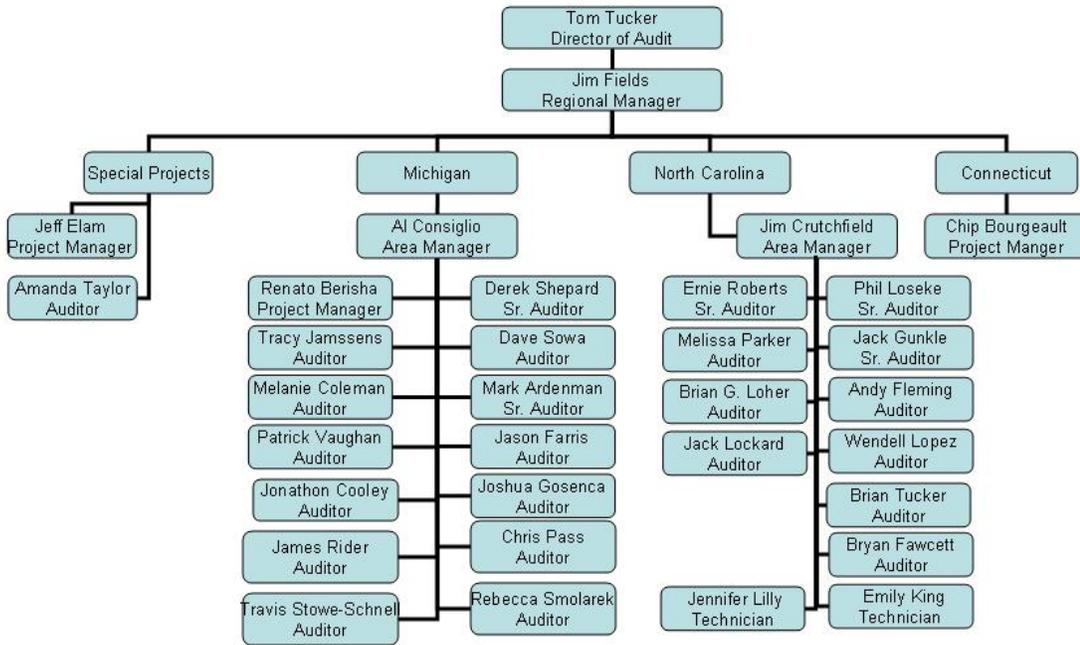


Tax Management Associates
Audit Staff – Region I
as of June 20, 2006



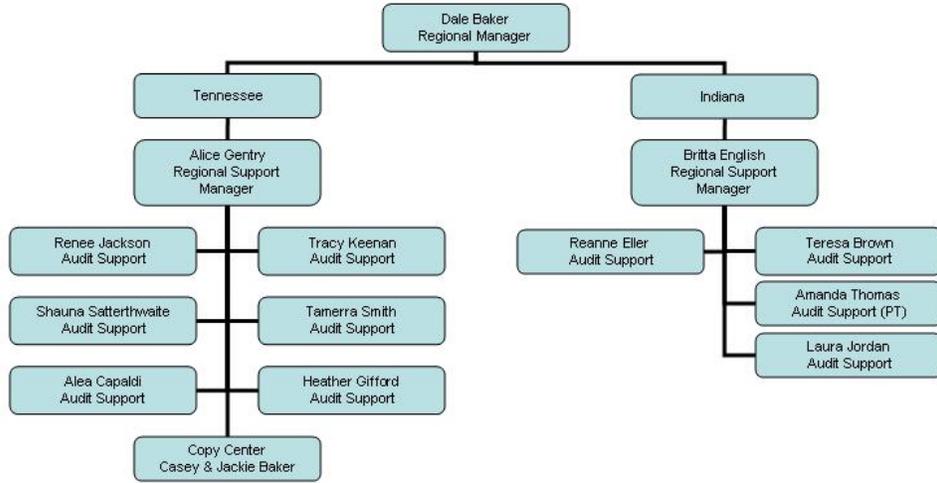


**Tax Management Associates
Audit Staff – Region II
as of June 20, 2006**



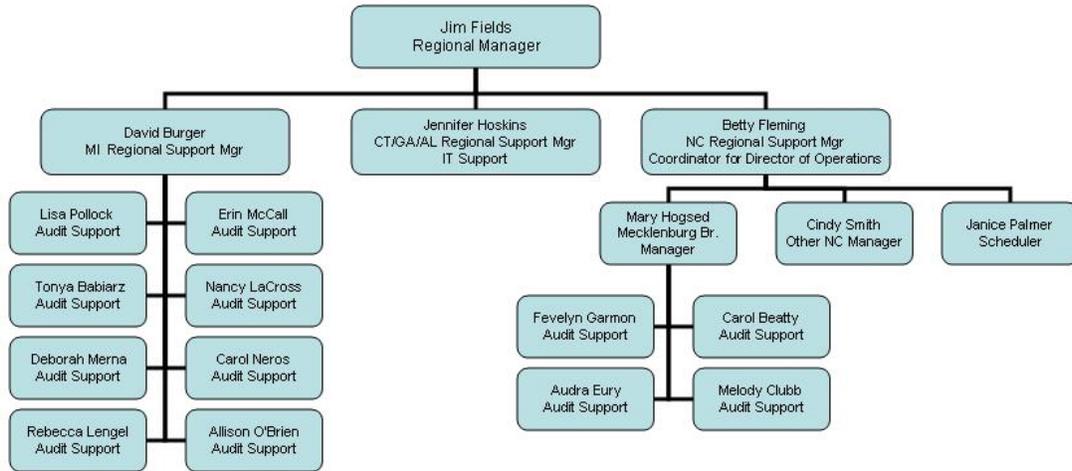


Tax Management Associates
Audit Support Staff – Region I
as of June 20, 2006





**Tax Management Associates
Audit Support Staff – Region II
as of June 20, 2006**





Article 1, Attachment C
Audit Process/Project Plan

The following is the anticipated audit process and work plan for the PRE audit program. The work plan covers all three audit cycles, beginning with the contract award and start date in September 2006 and continuing until June 2009. Any changes that may be necessary after consultation with Treasury and the Contract compliance inspector will be incorporated and re-submitted per ITB § 1.301.4. Furthermore, any changes deemed necessary due to unknown or undisclosed conditions surrounding information types or access issues will ultimately impact the work plan. The Contract Compliance Inspector will be apprised of such conditions as they arise, and appropriate changes will be submitted to Treasury for approval.

2006

| | |
|--------------------|---|
| July 17 | Bid Due |
| September 16 | Contract Start Date |
| September | Letter from Treasury to all eighty-two Michigan counties detailing project, TMA's role, and the needs of TMA and Treasury from assistance of County Equalization Directors. |
| October – December | Collection of Real Property record information from fifty-two counties in Michigan. Importation of information into TMA database system. Contact will also be made with the thirty Michigan target counties to assess information requirements and best practices to import information into TMA systems. Design and implementation of TMA database, query format, and application/report writing systems. |
| December | Treasury review meeting. Review the process of importing records and accessibility of data for database system. |

2007

| | |
|----------|--|
| January | Collection of Real Property information from the thirty target counties for comparison and review. Importation and segregation into TMA database system. |
| February | Query and reporting on information gathered from thirty target counties. This will be the period of review, which considers the internal validity of filed PRE's from within the thirty target counties. Begin initial query of records from all eighty-two counties to review for multiple ownership issues and other devalidating conditions. |



| | |
|------------------|---|
| March 1 | Submission of annual audit process work plan to the Contract Compliance Inspector. Review of progress and assessment of work plan to date. |
| March | Initial query reports submitted to Treasury for review. These will cover the internal validity conditions from the initial thirty county queries. Query results compiled for all eighty-two counties and lists prepared for Treasury mail merge to send out questionnaires. Treasury sends questionnaires to taxpayers. |
| April - May | Receive questionnaire responses from taxpayers and incorporate into TMA database. |
| June | Prepare and present final reports for first audit cycle to Treasury. END OF FIRST AUDIT CYCLE – BEGIN SECOND CYCLE |
| July – September | Data collection from all eighty-two counties |
| October | Thirty target county queries. |
| November | Initial query reports submitted to Treasury |
| December | Eighty-two county comparison and query. Treasury review meeting. Address the PRE audit results and recommendations to enhance the audit process. |

2008

| | |
|------------------|--|
| January | Query results compiled for all eighty-two counties and lists prepared for Treasury mail merge to send out questionnaires. Treasury sends questionnaires to taxpayers. |
| February – March | Receive questionnaire responses from taxpayers and incorporate into TMA database. |
| March 1 | Submission of annual audit process work plan to the Contract Compliance Inspector. Review of progress and assessment of work plan to date. |
| April – May | Prepare and present final reports for first audit cycle to Treasury. |
| June | Present final reports and review second audit cycle. END OF SECOND AUDIT CYCLE – BEGIN THIRD CYCLE |



| | |
|------------------|---|
| July – September | Data collection from all eighty-two counties |
| October | Thirty target county queries. |
| November | Initial query reports submitted to Treasury |
| December | Eighty-two county comparison and query. Treasury review meeting. Address the PRE audit results and recommendations to enhance the audit process. |

2009

| | |
|------------------|--|
| January | Query results compiled for all eighty-two counties and lists prepared for Treasury mail merge to send out questionnaires. Treasury sends questionnaires to taxpayers. |
| February – March | Receive questionnaire responses from taxpayers and incorporate into TMA database. |
| March 1 | Submission of annual audit process work plan to the Contract Compliance Inspector. Review of progress and assessment of work plan to date. |
| April – May | Prepare and present final reports for first audit cycle to Treasury. |
| June | Present final reports and review third audit cycle. |

END OF PRE AUDIT PROGRAM



Article 2 – General Terms and Conditions

2.010 Contract Structure and Administration

2.011 Definitions

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

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

2.012 Attachments and Exhibits

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

2.013 Statements of Work

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



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

2.014 Issuing Office

This Contract is issued by the Department of Management and Budget, Office of Purchasing Operations and Department of Treasury (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:

Irene Pena, CPPB
 Buyer Specialist
 Purchasing Operations
 Department of Management and Budget
 Mason Bldg, 2nd Floor
 PO Box 30026
 Lansing, MI 48909
 Email: Penal1@michigan.gov
 Phone: 517-241-1647.

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 Department of Treasury, will direct that the person named below, or any other person so designated, be authorized to monitor and coordinate the activities for the Contract on a day-to-day basis during its term. However, monitoring of this Contract implies **no authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions and specifications of such Contract as that authority is retained by the Office of Purchasing Operations.** The Contract Compliance Inspector for this Contract is:

David Buick
 Department of Treasury
 Bureau of Local Government
 430 West Allegan
 Lansing, MI 48922.

2.020 Contract Objectives/Scope/Background

2.021 Reserved

2.022 Reserved

2.023 Reserved

2.024 Reserved



2.025 Form, Function and Utility

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

2.030 Legal Effect and Term

2.031 Legal Effect

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

2.032 Contract Term

This Contract is for a period of three (3) years. The anticipated Contract term is from September 15, 2006 through September 14, 2009. All outstanding Purchase Orders shall also expire upon the termination (cancellation for any of the reasons listed in 2.210) of the Contract, unless otherwise extended pursuant to the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

2.033 Renewal(s)

This Contract may be renewed in writing by mutual agreement of the parties not less than thirty 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. **Article 1, Attachment B** provides an organization chart showing the roles of certain Key Personnel, if any.
- (ii) Key Personnel shall be dedicated as defined in **Article 1, Attachment B** to the Project for its duration in the applicable Statement of Work with respect to other individuals designated as Key Personnel for that Statement of Work.
- (iii) The State will have the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the State of the proposed assignment, will introduce the individual to the appropriate State representatives, and will provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State will provide a written explanation including reasonable detail outlining the reasons for the rejection. Additionally, the State's request shall be based on legitimate, good faith reasons. Proposed alternative for the individual denied, shall be fully qualified for the position.



(iv) Contractor shall not remove any Key Personnel from their assigned roles or the Contract without the prior written consent of the State. If the Contractor does remove Key Personnel without the prior written consent of the State, it shall be considered an unauthorized removal ("Unauthorized Removal"). It shall not be considered an Unauthorized Removal if Key Personnel must be replaced for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation or for cause termination of the Key Personnel's employment. It shall not be considered an Unauthorized Removal if Key Personnel must be replaced because of promotions or other job movements allowed by Contractor personnel policies or Collective Bargaining Agreement(s) as long as the State receives prior written notice before shadowing occurs and Contractor provides thirty days of shadowing unless parties agree to a different time period. The Contractor with the State shall review any Key Personnel replacements, and appropriate transition planning will be established. Any Unauthorized Removal may be considered by the State to be a material breach of the Contract, in respect of which the State may elect to exercise its rights under **Section 2.210**.

(v) It is acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of the Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under **Section 2.210**, the State may assess liquidated damages against Contractor as specified below.

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

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

- (c) Re-assignment of non-Key Personnel. Prior to re-deploying to other projects, at the completion of their assigned tasks on the Project, teams of its non-Key Personnel who are performing Services on-site at State facilities or who are otherwise dedicated primarily to the Project, Contractor will give the State at least ten Business Days notice of the proposed re-deployment to give the State an opportunity to object to the re-deployment if the State reasonably believes such team's Contract responsibilities are not likely to be completed and approved by the State prior to the proposed date of re-deployment.
- (d) Re-assignment of Personnel at the State's Request. The State reserves the right to require the removal from the Project of Contractor personnel found, in the judgment of the State, to be unacceptable. The State's request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good faith reasons. Replacement personnel for the removed person shall be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with removed personnel results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Service will not be counted in **Section 2.076** for a time as agreed to by the parties.
- (e) Staffing Levels.
- (i) All staff requirements not specified in the applicable Statement of Work or State-approved project plan as State personnel will be supplied by Contractor. This includes secretarial, clerical and Contract administration support staff necessary for Contractor to perform its obligations hereunder.
- (ii) Contractor shall provide sufficient personnel resources for the completion of Contract tasks indicated in Contractor's project plan approved by the State. If the level of personnel resources is insufficient to complete any Contractor Contract tasks in accordance with the Contract time schedule as demonstrated by Contractor's failure to meet mutually agreed to time schedules, Contractor shall promptly add additional qualified personnel resources to the performance of the affected tasks, at no additional charge to the State, in an amount sufficient to complete performance of Contractor's tasks in accordance with the Contract time schedule.



- (f) Personnel Turnover. The Parties agree that it is in their best interests to keep the turnover rate of employees of Contractor and its Subcontractors who are performing the Services to a reasonable minimum. Accordingly, if the State determines that the turnover rate of such employees is excessive and so notifies Contractor, Contractor will meet with the State to discuss the reasons for the turnover rate and otherwise use commercially reasonable efforts to minimize such turnover rate. If requested to do so by the State, Contractor will submit to the State its proposals for reducing the turnover rate to an acceptable level. In any event, notwithstanding the turnover of personnel, Contractor remains obligated to perform the Services without degradation and in accordance with the State-approved Contract schedule.
- (g) Location. All staff assigned by Contractor to work on the Contract will perform their duties either primarily at Contractor's offices and facilities or at State facilities. Without limiting the generality of the foregoing, Key Personnel will, at a minimum, spend at least the amount of time on-site at State facilities as indicated in the applicable Statement of Work. Subject to availability, selected Contractor personnel may be assigned office space to be shared with State personnel.

2.042 Contractor Identification

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

2.043 Cooperation with Third Parties

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

2.044 Subcontracting by Contractor

- (a) Contractor shall have full responsibility for the successful performance and completion of all of the Services and Deliverables. The State will consider Contractor to be the sole point of contact with regard to all Contractual matters under this Contract, including payment of any and all charges for Services and Deliverables.
- (b) Contractor shall not delegate any duties under this Contract to a Subcontractor unless the Department of Management and Budget, Office of Purchasing Operations has given written consent to such delegation. The State shall have the right of prior written approval of all Subcontractors and to require Contractor to replace any Subcontractors found, in the reasonable judgment of the State, to be unacceptable. The State's request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good faith reasons. Replacement Subcontractor(s) for the removed Subcontractor shall be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed Subcontractor, the State will agree to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with a removed Subcontractor results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in **Section 2.076** for a time agreed upon by the parties.
- (c) In any subcontracts entered into by Contractor for the performance of the Services, Contractor shall require the Subcontractor, to the extent of the Services to be performed by the Subcontractor, to be bound to Contractor by the terms of this Contract and to assume toward Contractor all of the obligations and responsibilities that Contractor, by this Contract, assumes toward the State. The State reserves the right to receive copies of and review all subcontracts, although Contractor may delete or mask any proprietary information, including pricing, contained in such Contracts before providing them to the State. The management of any Subcontractor will be the responsibility of Contractor, and Contractor shall remain responsible for the performance of its Subcontractors to the same extent as if Contractor had not subcontracted such performance.



Contractor shall make all payments to Subcontractors or suppliers of Contractor. Except as otherwise agreed in writing by the State and Contractor, the State will not be obligated to direct payments for the Services other than to Contractor. The State's written approval of any Subcontractor engaged by Contractor to perform any obligation under this Contract shall not relieve Contractor of any obligations or performance required under this Contract. Attached as **Exhibit E** is a list of the Subcontractors, if any, approved by the State as of the execution of this Contract, together with a copy of the applicable subcontract.

- (d) Except where specifically approved in writing by the State on a case-by-case basis, Contractor shall flow down the obligations in **Sections 2.040, 2.110, 2.150, 2.160, 2.171(c), 2.172(b), 2.180, 2.260, 2.276, 2.297** in all of its agreements with any Subcontractors.
- (e) The Contractor shall select Subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the Contract.

2.045 Contractor Responsibility for Personnel

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

2.050 State Standards

2.051 Existing Technology Standards

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

2.052 PM Methodology Standards

The State has adopted a standard documented Project Management Methodology (PMM) for use on all Information Technology (IT) based projects. See the State's PMM website at <http://www.michigan.gov/projectmanagement>.

The Contractor shall use the State's PPM to manage this Contract. If the Contractor requires training on the PMM, those costs shall be the responsibility of the Contractor, unless otherwise stated.

2.053 Adherence to Portal Technology Tools

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

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

Unless otherwise stated, Contractor must use the Portal Technology Tools to implement web content management and deployment efforts. Tools used for web-based application development must work in conjunction with Vignette and Inktomi. The interaction with Vignette and Inktomi must be coordinated with DIT, Enterprise Application Services Office, e-Michigan Web Development team.

Contractors that are compelled to use alternate tools must have received an exception from DIT, Enterprise Application Services Office, e-Michigan Web Development team, before this Contract is effective.

2.054 Acceptable Use Policy

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

2.060 Deliverables**2.061 Ordering**

- (a) Any Services/Deliverables to be furnished under this Contract shall be ordered by issuance of written Purchase Orders 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 be applicable, unless specifically contained in that Blanket Purchase Order's accompanying Statement of Work.

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

2.073 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 days, or if the Contractor becomes insolvent, be adjudicated bankrupt, or if it should make a general assignment for the benefit of creditors, or if a receiver shall be appointed due to its insolvency, and Contractor and/or its affiliates are unable to provide reasonable assurances that Contractor and/or its affiliates can deliver the services provided herein, the State may, without prejudice to any other right or remedy, terminate this Contract, in whole or in part, and, at its option, may take possession of the "Work in Process" and finish such Works in Process by whatever appropriate method the State may deem expedient. Contractor will fix appropriate notices or labels on the Work in Process to indicate ownership by the State. To the extent reasonably possible, materials and Work in Process shall be stored separately from other stock and marked conspicuously with labels indicating ownership by the State.

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

**2.075 Time is of the Essence**

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

2.076 Reserved2.080 Delivery and Acceptance of Deliverables**2.081 Reserved****2.082 Delivery of Deliverables**

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

2.083 Reserved**2.084 Approval of Deliverables, In General**

- (a) All Deliverables (Physical Deliverables and Written Deliverables) and Services require formal written approval by the State, in accordance with the following procedures. Formal approval by the State requires that the Deliverable be confirmed in writing by the State to meet its specifications, which will include the successful completion of Testing as applicable in **Section 2.083**, to be led by the State with the support and assistance of Contractor. The parties acknowledge that the approval process set forth herein will be facilitated by ongoing consultation between the parties, visibility of interim and intermediate Deliverables and collaboration on key decisions.
- (b) The State's obligation to comply with any State Review Period is conditioned on the timely delivery of Deliverables/Services being reviewed.
- (c) Prior to commencement of its review or testing of a Deliverable/Service, the State may inspect the Deliverable/Service to confirm that all components of the Deliverable/Service have been delivered without material deficiencies. If the State determines that the Deliverable/Service has material deficiencies, the State may refuse delivery of the Deliverable/Service without performing any further inspection or testing of the Deliverable/Service. Otherwise, the review period will be deemed to have started on the day the State receives the Deliverable or the Service begins, and the State and Contractor agree that the Deliverable/Service is ready for use and, where applicable, certification by Contractor in accordance with **Section 2.083(a)**.
- (d) The State will approve in writing a Deliverable/Service upon confirming that it conforms to and, performs in accordance with, its specifications without material deficiency. The State may, but shall not be required to, conditionally approve in writing a Deliverable/Service that contains material deficiencies if the State elects to permit Contractor to rectify them post-approval. In any case, Contractor will be responsible for working diligently to correct within a reasonable time at Contractor's expense all deficiencies in the Deliverable/Service that remain outstanding at the time of State approval.



- (e) If, after three (3) opportunities (the original and two repeat efforts), Contractor is unable to correct all deficiencies preventing Final Acceptance of a Deliverable/Service, the State may: (i) demand that Contractor cure the failure and give Contractor additional time to cure the failure at the sole expense of Contractor; or (ii) keep the Contract in force and do, either itself or through other parties, whatever Contractor has failed to do, in which event Contractor shall bear any excess expenditure incurred by the State in so doing beyond the Contract price for such Deliverable/Service and will pay the State an additional sum equal to ten percent (10%) of such excess expenditure to cover the State's general expenses provided the State can furnish proof of such general expenses; or (iii) terminate the particular Statement of Work for default, either in whole or in part by notice to Contractor provided Contractor is unable to cure such breach. Notwithstanding the foregoing, the State shall not use, as a basis for exercising its termination rights under this Section, deficiencies discovered in a repeat State Review Period that could reasonably have been discovered during a prior State Review Period.
- (f) The State, at any time and in its reasonable discretion, may halt the testing or approval process if such process reveals deficiencies in or problems with a Deliverable/Service in a sufficient quantity or of a sufficient severity as to make the continuation of such process unproductive or unworkable. In such case, the State may stop using the Service or return the applicable Deliverable to Contractor for correction and re-delivery prior to resuming the testing or approval process.

2.085 Process For Approval of Written Deliverables

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

2.086 Process for Approval of Services

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

2.087 Reserved

2.088 Final Acceptance

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

2.090 Financial**2.091 Pricing**

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

2.092 Invoicing and Payment Procedures and Terms

- (a) **Invoicing and Payment – In General**
- (i) Each Statement of Work issued under this Contract shall list (or indicate by reference to the appropriate Contract Exhibit) the prices for all Services/Deliverables, equipment and commodities to be provided, and the associated payment milestones and payment amounts.
- (ii) Each Contractor invoice will show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements. Prompt payment by the State is contingent on the Contractor's invoices showing the amount owed by the State minus any holdback amount to be retained by the State in accordance with **Section 2.094**.
- (iii) Correct invoices will be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 Public Act No. 279, MCL 17.51 et seq., within forty-five (45) days after receipt, provided the State determines that the invoice was properly rendered.
- (b) **Taxes (See Section 2.305 and Article 3, Section 3.022-3.024 for additional)**
The State is exempt from Federal Excise Tax, State and Local Sales Taxes, and Use Tax with respect to the sale to and use by it of tangible personal property. Such taxes shall not be included in Contract prices as long as the State maintains such exemptions. Copies of all tax exemption certificates shall be supplied to Contractor, if requested.
- (c) **Out-of-Pocket Expenses**
Contractor acknowledges that the out-of-pocket expenses that Contractor expects to incur in performing the Services/ providing the Deliverables (such as, but not limited to, travel and lodging, document reproduction and shipping, and long distance telephone) are included in Contractor's fixed price for each Statement of Work. Accordingly, Contractor's out-of-pocket expenses are not separately reimbursable by the State unless, on a case-by-case basis for unusual expenses, the State has agreed in advance and in writing to reimburse Contractor for such an expense at the State's current travel reimbursement rates. See http://www.mi.gov/dmb/0,1607,7-150-9141_13132---,00.html for current rates.
- (d) **Pro-ration**
To the extent there are any Services that are to be paid for on a monthly basis, the cost of such Services shall be pro-rated for any partial month.
- (e) **Antitrust Assignment**
The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.



(f) Final Payment

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

2.093 State Funding Obligation

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

2.094 RESERVED**2.095 Electronic Payment Availability**

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

2.100 Contract Management**2.101 Contract Management Responsibility**

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

2.102 Problem and Contract Management Procedures

The Contract and the applicable Statements of Work will govern problem Management and Contract Management procedures.

2.103 Reports and Meetings

(a) Reports.

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

2.104 System Changes

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

2.105 Reserved

2.106 Change Requests

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

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

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



(a) Change Requests

(i) State Requests

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

(ii) Contractor Recommendations

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

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

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

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

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

2.107 Management Tools

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

2.110 Records and Inspections

2.111 Records and Inspections

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



- (b) Examination of Records. Contractor agrees that the State, including its duly authorized representatives, until the expiration of seven (7) years following the creation of the material (collectively, the "Audit Period"), shall, upon twenty 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 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.

2.112 Errors

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

2.120 State Responsibilities

2.121 State Performance Obligations

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



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

2.130 Security

2.131 Background Checks

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

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, and proprietary, or with a similar designation. "Confidential Information" of the State shall mean any information which is retained in confidence by the State (or otherwise required to be held in confidence by the State pursuant to applicable federal, state and local laws and regulations) or which, in the case of tangible materials provided to Contractor by the State pursuant to its performance under this Contract, is marked as confidential, proprietary or with a similar designation by the State. In the case of information of either Contractor or the State "Confidential Information" shall exclude any information (including this Contract) that is publicly available pursuant to the Michigan FOIA.

**2.153 Protection of Confidential Information**

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

2.154 Exclusions

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

2.155 No Implied Rights

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

2.156 Remedies

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

2.157 Security Breach Notification

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

2.158 Survival

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

**2.159 Destruction of Confidential Information**

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

2.160 Proprietary Rights**2.161 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 may use the data provided by the Contractor for any purpose. The State will not possess or assert any lien or other right against the Contractor's data. Without limiting the generality of this Section, the State shall only use personally identifiable information as strictly necessary to utilize the Services and shall disclose such information only to its employees who have a strict need to know such information, except as provided by law. The State shall comply at all times with all laws and regulations applicable to such personally identifiable information. Other material developed and provided to the State shall remain the State's sole and exclusive property.

2.164 Ownership of Materials

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

2.165 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 represents and warrants:

- (a) It is capable in all respects of fulfilling and shall fulfill all of its obligations under this Contract. The performance of all obligations under this Contract shall be provided in a timely, professional, and workman-like manner and shall meet the performance and operational standards required under this Contract.



- (b) The Contract Appendices, Attachments and Exhibits identify the equipment and software and services necessary for the Deliverable(s) to perform and Services to operate in compliance with the Contract's requirements and other standards of performance.
- (c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by Contractor under this Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by Contractor to the State under neither this Contract, nor their use by the State, will infringe the patent, copyright, trade secret, or other proprietary rights of any third party.
- (d) If, under this Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to such items in this Contract, Contractor shall assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.
- (e) The Contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into this Contract, on behalf of Contractor.
- (f) It is qualified and registered to transact business in all locations where required.
- (g) Neither the Contractor nor any Affiliates, nor any employee of either, has, shall have, or shall acquire, any Contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under this Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor shall notify the State within two (2) days of any such interest that may be incompatible with the interests of the State.
- (h) Neither Contractor nor any Affiliates, nor any employee of either has accepted or shall accept anything of value based on an understanding that the actions of the Contractor or Affiliates or employee on behalf of the State would be influenced. Contractor shall not attempt to influence any State employee by the direct or indirect offer of anything of value.
- (i) Neither Contractor nor any Affiliates, nor any employee of either has paid or agreed to pay any person, other than bona fide employees and consultants working solely for Contractor or such Affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.
- (j) The prices proposed by Contractor were arrived at independently, without consultation, communication, or agreement with any other Contractor for the purpose of restricting competition; the prices quoted were not knowingly disclosed by Contractor to any other Contractor; and no attempt was made by Contractor to induce any other person to submit or not submit a proposal for the purpose of restricting competition.
- (k) All financial statements, reports, and other information furnished by Contractor to the State as part of its response to the Contract 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 has been no material adverse change in the business, properties, financial condition, or results of operations of Contractor.
- (m) All written information furnished to the State by or behalf of Contractor in connection with this Contract, including its bid, is true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make such information not misleading.
- (n) It is not in material default or breach of any other Contract or agreement that it may have with the State or any of its departments, commissions, boards, or agencies. Contractor further represents and warrants that it has not been a party to any Contract with the State or any of its departments that was terminated by the State or such department within the previous five (5) years for the reason that Contractor failed to perform or otherwise breached an obligation of such Contract.

**2.172 RESERVED****2.173 RESERVED****2.174 RESERVED****2.175a DISCLAIMER**

THE FOREGOING EXPRESS WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES AND EACH PARTY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

2.176 Consequences For Breach

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

2.180 Insurance**2.181 Liability Insurance****(a) Liability Insurance**

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

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

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

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

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

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

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

Before both parties sign the Contract or before the purchase order is issued by the State, the Contractor must furnish to the Director of 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 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 a self-insurer provides the applicable coverage, proof must be provided of approved self-insured authority by the jurisdiction of domicile. For employees working outside of the state of qualification, Contractor must provide appropriate certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.

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

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

4. Employers liability insurance with the following minimum limits:

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

5. Employee Fidelity, including Computer Crimes, insurance naming the State as a loss payee, providing coverage for direct loss to the State and any legal liability of the State arising out of or related to fraudulent or dishonest acts committed by the employees of Contractor or its Subcontractors, acting alone or in collusion with others, in a minimum amount of one million dollars (\$1,000,000.00) with a maximum deductible of fifty thousand dollars (\$50,000.00).
6. Umbrella or Excess Liability Insurance in a minimum amount of ten million dollars (\$10,000,000.00), which shall apply, at a minimum, to the insurance required in Subsection 1 (Commercial General Liability) above.
7. Professional Liability (Errors and Omissions) Insurance with the following minimum coverage: three million dollars (\$3,000,000.00) each occurrence and three million dollars (\$3,000,000.00) annual aggregate.



- 8. Fire and Personal Property Insurance covering against any loss or damage to the office space used by Contractor for any reason under this Contract, and the equipment, software and other contents of such office space, including without limitation, those contents used by Contractor to provide the Services to the State, up to the replacement value thereof, where such office space and its contents are under the care, custody and control of Contractor. Such policy shall cover all risks of direct physical loss or damage, including without limitation, flood and earthquake coverage and coverage for computer hardware and software. The State shall be endorsed on the policy as a loss payee as its interests appear.
- (b) Subcontractors
Except where the State has approved in writing a Contractor subcontract with other insurance provisions, Contractor shall require all of its Subcontractors under this Contract to purchase and maintain the insurance coverage as described in this Section for the Contractor in connection with the performance of work by those Subcontractors. Alternatively, Contractor may include any Subcontractors under Contractor's insurance on the coverage required in this Section. Subcontractor(s) shall fully comply with the insurance coverage required in this Section. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.
- (c) Certificates of Insurance and Other Requirements
Contractor shall furnish to the Office of 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 twenty 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 insured 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 days written notice, the State may pay such premium or procure similar insurance coverage from another company or companies; and at the State's election, the State may deduct the entire cost (or part thereof) from any payment due Contractor, or Contractor shall pay the entire cost (or any part thereof) upon demand by the State.

2.190 Indemnification

2.191 Indemnification

- (a) General Indemnification
To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties), accruing or resulting to any person, firm or corporation that may be injured or damaged by the Contractor in the performance of this Contract and that are attributable to the negligence or tortious acts of the Contractor or any of its subcontractors, or by anyone else for whose acts any of them may be liable.
- (b) Code Indemnification
To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from any claim, loss, or expense arising from Contractor's breach of the No Surreptitious Code Warranty.



(c) Employee Indemnification

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

(d) Patent/Copyright Infringement Indemnification

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

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

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

2.192 Continuation of Indemnification Obligations

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

2.193 Indemnification Procedures

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

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



- (b) If Contractor delivers a Notice of Election relating to any claim: (i) the State shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in the handling of such claim and to monitor and advise the State about the status and progress of the defense; (ii) Contractor shall, at the request of the State, demonstrate to the reasonable satisfaction of the State, Contractor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) Contractor shall periodically advise the State about the status and progress of the defense and shall obtain the prior written approval of the State before entering into any settlement of such claim or ceasing to defend against such claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State shall have the right, at its own expense, to control the defense of that portion of such claim involving the principles of Michigan governmental or public law. Notwithstanding the foregoing, the State may retain control of the defense and settlement of a claim by written notice to Contractor given within ten (10) days after the State's receipt of Contractor's information requested by the State pursuant to clause (ii) of this paragraph if the State determines that Contractor has failed to demonstrate to the reasonable satisfaction of the State Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State of Michigan, or any of its subdivisions pursuant to this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State pursuant to this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.
- (c) If Contractor does not deliver a Notice of Election relating to any claim of which it is notified by the State as provided above, the State shall have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of Contractor. If it is determined that the claim was one against which Contractor was required to indemnify the State, upon request of the State, Contractor shall promptly reimburse the State for all such reasonable costs and expenses.

2.200 Limits of Liability and Excusable Failure

2.201 Limits of Liability

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

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

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

2.202 Excusable Failure

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



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

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

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

2.203 Disaster Recovery

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

2.210 Termination/Cancellation by the State

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

2.211 Termination for Cause

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



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

2.212 Termination for Convenience

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

2.213 Non-Appropriation

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

2.214 Criminal Conviction

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

**2.215 Approvals Rescinded**

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

2.216 Rights and Obligations Upon Termination

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

2.217 Reservation of Rights

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

2.218 Contractor Transition Responsibilities

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

- (a) Personnel - The Contractor shall work with the State, or a specified third party, to develop a transition plan setting forth the specific tasks and schedule to be accomplished by the parties, to effect an orderly transition. The Contractor shall allow as many personnel as practicable to remain on the job to help the State, or a specified third party, maintain the continuity and consistency of the services required by this Contract. In addition, during or following the transition period, in the event the State requires the Services of the Contractor's subcontractors or vendors, as necessary to meet its needs, Contractor agrees to reasonably, and with good-faith, work with the State to use the Services of Contractor's subcontractors or vendors. Contractor will notify all of Contractor's subcontractors of procedures to be followed during transition.



- (b) Information - The Contractor agrees to provide reasonable detailed specifications for all Services/Deliverables needed by the State, or specified third party, to properly provide the Services/Deliverables required under this Contract. The Contractor will provide the State with asset management data generated from the inception of this Contract through the date on which this Contractor is terminated in a comma-delineated format unless otherwise requested by the State. The Contractor will deliver to the State any remaining owed reports and documentation still in Contractor's possession subject to appropriate payment by the State.
- (c) Software. - The Contractor shall reasonably assist the State in the acquisition of any Contractor software required to perform the Services/use the Deliverables under this Contract. This shall include any documentation being used by the Contractor to perform the Services under this Contract. If the State transfers any software licenses to the Contractor, those licenses shall, upon expiration of the Contract, transfer back to the State at their current revision level. Upon notification by the State, Contractor may be required to freeze all non-critical changes to Deliverables/Services.
- (d) Payment - If the termination provisions of this Contract shall govern the transition results from a termination for any reason, reimbursement. 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). The Contractor will prepare an accurate accounting from which the State and Contractor may reconcile all outstanding accounts.

2.219 State Transition Responsibilities

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

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

2.220 Termination by Contractor

2.221 Termination by Contractor

If the State materially breaches its obligation to pay Contractor undisputed amounts due and owing under this Contract in accordance with **Section 2.090**, or if the State breaches its other obligations under this Contract to an extent that makes it impossible or commercially impractical for Contractor to perform the Services, and if the State does not cure the breach within the time period specified in a written notice of breach provided to the State by Contractor (such time period not to be less than thirty 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 calendar days after the stop work order is delivered to Contractor, and for any further period to which the parties may agree. The stop work order shall be specifically identified as such and shall indicate that it is issued under this **Section 2.230**. Upon receipt of the stop work order, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of the stop work order, the State shall either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order as provided in **Section 2.210**.

2.232 Cancellation or Expiration of Stop Work Order

If a stop work order issued under this **Section 2.230** is canceled or the period of the stop work order or any extension thereof expires, Contractor shall resume work. The parties shall agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if:



(a) the stop work order results in an increase in the time required for, or in Contractor's costs properly allocable to, the performance of any part of the Contract; and (b) Contractor asserts its right to an equitable adjustment within thirty calendar days after the end of the period of work stoppage; provided that, if the State decides the facts justify the action, the State may receive and act upon a Contractor proposal submitted at any time before final payment under the Contract. Any adjustment will conform to the requirements of **Section 2.106**.

2.233 Allowance of Contractor Costs

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

2.240 Reserved

2.250 Dispute Resolution

2.251 In General

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

2.252 Informal Dispute Resolution

- (a) All operational disputes between the parties shall be resolved under the Contract Management procedures developed pursuant to **Section 2.100**. If the parties are unable to resolve any disputes after compliance with such processes, the parties shall meet with the Director of Purchasing Operations, DMB, or designee, for the purpose of attempting to resolve such dispute without the need for formal legal proceedings, as follows:
- (i) The representatives of Contractor and the State shall meet as often as the parties reasonably deem necessary in order to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.
 - (ii) During the course of negotiations, all reasonable requests made by one party to another for non-privileged information reasonably related to the Contract will be honored in order that each of the parties may be fully advised of the other's position.
 - (iii) The specific format for the discussions will be left to the discretion of the designated State and Contractor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.
 - (iv) Following the completion of this process within sixty calendar days, the Director of Purchasing Operations, DMB, or designee, shall issue a written opinion regarding the issue(s) in dispute within thirty 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 days of its occurrence. Details of settlements, which are prevented from disclosure by the terms of the settlement, may be annotated as such. Information provided to the State from Contractor's publicly filed documents referencing its material litigation would 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 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 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 days whenever changes to company affiliations occur.

2.272 Governing Law

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

2.273 Compliance with Laws

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

2.274 Jurisdiction

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

2.280 *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: State of Michigan
Office of Purchasing Operations
Attention: Irene Pena, CPPB
PO Box 30026
530 West Allegan
Lansing, Michigan 48909



Contractor(s): Tax Management Associates, inc.
Richard Cooke
2225 Coronation Blvd.
Charlotte, NC 28227

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

(b) Binding Commitments

Representatives of Contractor identified in **Article 1B.104** shall have the authority to make binding commitments on Contractor's behalf within the bounds set forth in such table. Contractor may change such representatives from time to time upon written notice.

2.297 Media Releases and Contract Distribution

(a) Media Releases

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

(b) Contract Distribution

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

2.298 Reformation and Severability

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

2.299 Consents and Approvals

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

2.300 No Waiver of Default

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

2.301 Survival

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

2.302 Covenant of Good Faith

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

**2.303 Permits**

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

2.304 Website Incorporation

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

2.305 Taxes

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

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

2.306 Reserved**2.307 Reserved****2.308 Future Bidding Preclusion**

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

2.310 Reserved

2.320 Extended Purchasing

2.321 Reserved**2.322 RESERVED**

2.330 Reserved