

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

July 29, 2009

**CHANGE NOTICE NO. 1**  
**TO**  
**CONTRACT NO. 071B7200004**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF VENDOR  <b>Citizens Management Inc.</b> <b>P.O. Box 620</b> <b>Howell, MI 48844</b>	TELEPHONE (517) 540-3177 <b>Scott Gaffner</b>
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-0684 <b>Brian Kloeckner</b>
Contract Compliance Inspector: Ken Swisher <b>Worker's Compensation TPA Services – DMB-OSE</b>	
CONTRACT PERIOD: From: <b>October 1, 2006</b> To: <b>September 30, 2010</b>	
TERMS <p style="text-align: center;"><b>N/A</b></p>	SHIPMENT <p style="text-align: center;"><b>N/A</b></p>
F.O.B. <p style="text-align: center;"><b>N/A</b></p>	SHIPPED FROM <p style="text-align: center;"><b>N/A</b></p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;"><b>N/A</b></p>	

**NATURE OF CHANGE(S):**

Effective immediately, this Contract is hereby **EXTENDED** through September 30, 2010, and **INCREASED** by \$2,000,000.00.

**NOTE:** The DMB Buyer for this Contract is changed to Brian Kloeckner (517) 241-0684.

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

**AUTHORITY/REASON:**

Per agency request (PRF dated 5/26/09), vendor agreement (letter dated 6/23/09), Ad Board approval on 7/21/09, and DMB/Purchasing Operations' approval.

**REVISED CURRENT AUTHORIZED SPEND LIMIT:                   \$7,841,600.00**

**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 26, 2006

**NOTICE**  
**TO**  
**CONTRACT NO. 071B7200004**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF VENDOR  <b>Citizens Management Inc.</b> <b>P.O. Box 620</b> <b>Howell, MI 48844</b>	TELEPHONE (517) 540-3177 <b>Scott Gaffner</b>
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 373-1080 <b>Melissa Castro</b>
Contract Compliance Inspector: Ken Swisher <b>Worker's Compensation TPA Services – DMB-OSE</b>	
CONTRACT PERIOD: From: <b>October 1, 2006</b> To: <b>September 30, 2009</b>	
TERMS <p style="text-align: center;"><b>N/A</b></p>	SHIPMENT <p style="text-align: center;"><b>N/A</b></p>
F.O.B. <p style="text-align: center;"><b>N/A</b></p>	SHIPPED FROM <p style="text-align: center;"><b>N/A</b></p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;"><b>N/A</b></p>	

**Estimated Contract Value:                      \$5,841,600.00**

**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. 071B7200004  
 between  
 THE STATE OF MICHIGAN  
 and**

NAME & ADDRESS OF VENDOR  <b>Citizens Management Inc.          P.O. Box 620          Howell, MI 48844</b>	TELEPHONE (517) 540-3177 <b>Scott Gaffner</b> VENDOR NUMBER/MAIL CODE  BUYER/CA (517) 373-1080 <b>Melissa Castro</b>
Contract Compliance Inspector: Ken Swisher <b>Worker's Compensation TPA Services – DMB-OSE</b>	
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MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;"><b>N/A</b></p>	
MISCELLANEOUS INFORMATION:          <b>Estimated Contract Value:                      \$5,841,600.00</b>	

**FOR THE VENDOR:**

**FOR THE STATE:**

**Citizens Management Inc.**  
 \_\_\_\_\_  
 Firm Name

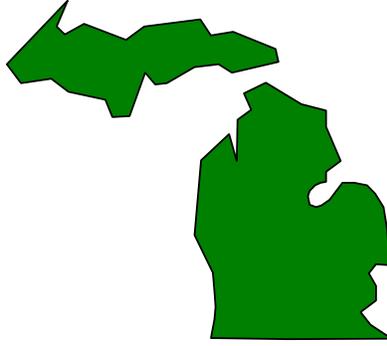
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 Authorized Agent (Print or Type)

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 Date

\_\_\_\_\_  
 Signature  
**Elise A. Lancaster**  
 \_\_\_\_\_  
 Name  
**Director of Purchasing Operations**  
 \_\_\_\_\_  
 Title

\_\_\_\_\_  
 Date



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

**Workers' Compensation  
Third-Party Administration Services**

Buyer Name: Melissa Castro  
Telephone Number: 517-373-1080  
E-Mail Address: [castrom@michigan.gov](mailto:castrom@michigan.gov)



Table of Contents

**Article 1 – Statement of Work (SOW)-----7**

1.0 Project Identification-----7

    1.001 Project Request-----7

    1.002 Background-----7

1.1 Scope of Work and Deliverables-----7

    1.101 In Scope-----7

    1.102 Out of Scope-----7

    1.103 Environment-----7

    1.104 Work and Deliverable-----7

1.2 Roles and Responsibilities-----15

    1.201 Contractor Staff, Roles, and Responsibilities-----15

    1.202 State Staff, Roles, and Responsibilities-----16

    1.203 Other Roles and Responsibilities-----16

1.3 Project Plan-----16

    1.301 Project Plan Management-----16

    1.302 Reports-----17

1.4 Project Management-----18

    1.401 Issue Management-----18

    1.402 Risk Management-----19

    1.403 Change Management-----19

1.5 Acceptance-----19

    1.501 Criteria-----19

    1.502 Final Acceptance-----19

1.6 Compensation and Payment-----20

    1.601 Compensation and Payment-----20

1.7 Additional Terms and Conditions Specific to this SOW-----20

    1.701 Additional Terms and Conditions Specific to this SOW - Reserved-----20

**Attachments-----21**

**Article 1, Attachment A-----21**

**Article 1, Attachment B-----24**

**Article 1, Attachment C, D, E, F & G - Reserved-----25**

**Article 1, Attachment H-----26**

**Article 2 General Terms and Conditions-----28**

2.010 Contract Structure and Administration-----28

    2.011 Definitions-----28

    2.012 Attachments and Exhibits-----28

    2.013 Statements of Work-----28

    2.014 Issuing Office-----29

    2.015 Contract Compliance Inspector-----29

2.020 Contract Objectives/Scope/Background - Reserved-----30

2.030 Legal Effect and Term-----30

    2.031 Legal Effect-----30

    2.032 Contract Term-----30

2.040 Contractor Personnel-----30

    2.041 Contractor Personnel-----30

    2.042 Contractor Identification-----32

    2.043 Cooperation with Third Parties-----32

    2.044 Subcontracting by Contractor-----32

    2.045 Contractor Responsibility for Personnel-----33

2.050 State Standards-----33

    2.051 Existing Technology Standards-----33

    2.052 PM Methodology Standards-----33

    2.053 Adherence to Portal Technology Tools-----33

    2.054 Acceptable Use Policy-----34



2.060 Deliverables----- 34

    2.061 Ordering----- 34

    2.062 Software - Reserved ----- 34

    2.063 Hardware - Reserved ----- 34

    2.064 Equipment to be New and Prohibited Products ----- 34

2.070 Performance----- 34

    2.071 Performance, In General----- 34

    2.072 Time of Performance----- 35

    2.073 Liquidated Damages ----- 35

    2.074 Bankruptcy ----- 35

    2.075 Time is of the Essence ----- 35

2.080 Delivery and Acceptance of Deliverables ----- 36

    2.081 Delivery Responsibilities ----- 36

    2.082 Delivery of Deliverables ----- 36

    2.083 Testing - Reserved ----- 36

    2.084 Approval of Deliverables, In General----- 37

    2.085 Process For Approval of Written Deliverables ----- 37

    2.086 Process for Approval of Services ----- 38

    2.087 Process for Approval of Physical Deliverables ----- 38

    2.088 Final Acceptance----- 38

2.090 Financial ----- 38

    2.091 Pricing ----- 38

    2.092 Invoicing and Payment Procedures and Terms ----- 39

    2.093 State Funding Obligation----- 40

    2.094 Holdback - Reserved----- 40

    2.095 Electronic Payment Requirement----- 40

2.100 Contract Management ----- 40

    2.101 Contract Management Responsibility----- 40

    2.102 Problem and Contract Management Procedures ----- 40

    2.104 System Changes----- 40

    2.105 Reserved----- 40

    2.106 Change Requests----- 40

2.110 Records and Inspections ----- 42

    2.111 Records and Inspections----- 42

    2.112 Errors ----- 43

2.120 State Responsibilities ----- 43

    2.121 State Performance Obligations ----- 43

2.130 Security ----- 43

    2.131 Background Checks----- 43

2.140 Reserved ----- 43

2.150 Confidentiality ----- 44

    2.151 Freedom of Information ----- 44

    2.152 Confidentiality----- 44

    2.153 Protection of Confidential Information ----- 44

    2.154 Exclusions ----- 44

    2.155 No Implied Rights ----- 45

    2.156 Remedies ----- 45

    2.157 Security Breach Notification----- 45

    2.158 Survival----- 45

    2.159 Destruction of Confidential Information----- 45

2.160 Proprietary Rights ----- 45

    2.163 Rights in Data----- 46

    2.164 Ownership of Materials ----- 46

    2.165 Standard Software ----- 46

    2.166 Pre-existing Materials for Custom Software Deliverables - Reserved ----- 46

    2.167 General Skills ----- 46



2.170 Warranties And Representations----- 46  
 2.171 Warranties and Representations----- 46  
 2.175 DISCLAIMER ----- 48  
 2.176 Consequences For Breach----- 48  
 2.180 Insurance----- 48  
 2.181 Liability Insurance----- 48  
 2.190 Indemnification----- 50  
 2.191 Indemnification ----- 50  
 2.192 Continuation of Indemnification Obligations----- 51  
 2.193 Indemnification Procedures ----- 51  
 2.200 Limits of Liability and Excusable Failure----- 52  
 2.201 Limits of Liability----- 52  
 2.202 Excusable Failure----- 52  
 2.203 Disaster Recovery ----- 53  
 2.210 Termination/Cancellation by the State ----- 53  
 2.211 Termination for Cause ----- 53  
 2.212 Termination for Convenience ----- 53  
 2.213 Non-Appropriation ----- 54  
 2.214 Criminal Conviction----- 54  
 2.216 Rights and Obligations Upon Termination ----- 54  
 2.217 Reservation of Rights----- 55  
 2.218 Contractor Transition Responsibilities ----- 55  
 2.219 State Transition Responsibilities ----- 55  
 2.220 Termination by Contractor----- 56  
 2.221 Termination by Contractor ----- 56  
 2.230 Stop Work----- 56  
 2.231 Stop Work Orders----- 56  
 2.232 Cancellation or Expiration of Stop Work Order ----- 56  
 2.233 Allowance of Contractor Costs ----- 56  
 2.240 Reserved ----- 56  
 2.250 Dispute Resolution----- 56  
 2.251 In General ----- 56  
 2.252 Informal Dispute Resolution----- 57  
 2.253 Injunctive Relief ----- 57  
 2.254 Continued Performance ----- 57  
 2.260 Federal and State Contract Requirements----- 57  
 2.261 Nondiscrimination----- 57  
 2.262 Unfair Labor Practices ----- 58  
 2.263 Workplace Safety and Discriminatory Harassment----- 58  
 2.270 Litigation ----- 58  
 2.271 Disclosure of Litigation ----- 58  
 2.272 Governing Law ----- 59  
 2.273 Compliance with Laws----- 59  
 2.274 Jurisdiction ----- 59  
 2.280 Environmental Provision----- 59  
 2.281 Environmental Provision ----- 59  
 2.290 General ----- 60  
 2.291 Amendments----- 60  
 2.292 Assignment----- 60  
 2.293 Entire Contract; Order of Precedence ----- 60  
 2.294 Headings----- 60  
 2.295 Relationship of the Parties (Independent Contractor Relationship) ----- 60  
 2.296 Notices ----- 60  
 2.297 Media Releases and Contract Distribution ----- 61  
 2.298 Reformation and Severability ----- 61  
 2.299 Consents and Approvals----- 61  
 2.300 No Waiver of Default----- 61  
 2.301 Survival----- 61



2.302 Covenant of Good Faith----- 62  
2.303 Permits ----- 62  
2.304 Website Incorporation ----- 62  
2.305 Taxes ----- 62  
2.306 Prevailing Wage----- 62  
2.307 Call Center Disclosure----- 62  
2.308 Future Bidding Preclusion ----- 63  
2.310 Reserved ----- 63  
2.320 Extended Purchasing----- 63  
2.321 MiDEAL ----- 63  
2.330 Federal Grant Requirements - Reserved----- 63



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

### **1.0 Project Identification**

#### **1.001 Project Request**

The purpose of this Contract is to provide claims administration for the Workers' Disability Compensation Plan for State of Michigan employees. The Contractor will, in part, provide claims administration, claim processing, claim reporting and record keeping, overpayment recovery, subrogation, return-to-work support, appeals processing, auditing and billing and claims investigation and litigation support. Appropriate reserving practices will also be expected.

#### **1.002 Background**

The State of Michigan provides for wage loss and medical payments for workers' compensation disability (work related) injuries and illnesses incurred by state employees. The program is completely self-insured. There is the potential of adding aggregate stop loss coverage for claims exceeding 125% of expected loss levels. If this approach is adopted, the expected loss levels will be established at the beginning of each fiscal year.

##### General:

The Contractor will provide disability claims administration services beginning October 1, 2006.

##### Specific:

The specific services provided by the Contractor, may, as requested by the State, include, claims administration, claim processing, claims investigation, claim reporting and record keeping, overpayment recovery, subrogation, return-to-work support, appeals processing, auditing, litigation support, reserving and billing, for workers' compensation related claims functions involving State of Michigan employees. Initial marketing, promotion and statewide seminars are included as part of the expectations of the State as part of this agreement. Materials and staffing to accomplish this initial promotional effort should be included in the Contractor's price proposal. Compliance with specific directives of the State's Contract Compliance Administrator shall also be included in the tasks prescribed under this contract.

### **1.1 Scope of Work and Deliverables**

#### **1.101 In Scope**

In scope services include: claims administration, claim processing, claims investigation, claim reporting and record keeping, overpayment recovery, subrogation, return-to-work support, appeals processing, auditing, reserving and billing, for workers' compensation related claims functions involving State of Michigan employees.

#### **1.102 Out of Scope**

Services that are not related to the administration, documentation or reporting of workers' compensation claims are considered outside the scope.

#### **1.103 Environment**

The State of Michigan operates with a Lawson based Human Resource Management Network (HRMN). This is an ORACLE based operating system. The Contractor's technical environment should be compatible with this system. It is anticipated that all reporting and data requested under this Contract will be "Microsoft Office" compatible.

#### **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. Claims Intake

It is the State's intention to develop and manage a common claims intake system for both Workers' Compensation and LTD claims. This system will interface with Lawson, the State's HR system. The Contractor will interface with this system to download claims submissions. Electronic interface with the long-term disability (LTD) TPA will also be required.

Contractor Response to this Task:

Cost to be determined based on level of interface.

### 2. Claims Administration

a. Account Manager: The Contractor shall assign an account manager who will have the primary responsibility for interacting with the State's Contract Compliance Inspector and also be responsible for resolving any issues relative to the ongoing operation of this contract. The Account Manager shall be at a level within the organization to be able to make decisions on behalf of the Contractor and effect changes that will be upheld by the Contractor without incurring delays. All contract, policy and procedure issues involving this contract shall be the responsibility of the State's Contract Compliance Inspector and the Contractor's Account Manager to resolve.

Contractor Response to this Task:

Agreed.

b. Audits: The State of Michigan will require the third-party administrator to undergo financial and performance audits from outside companies to assure both the financial viability of the disability management programs and the operational viability. These audits will require the third-party administrator to provide any assistance, detail payment information, data base access, hard copy claim file access, staff access, and space access to the party selected to perform the indicated audit. These audits may be performed annually. In addition, the Auditor General for the State of Michigan may choose to perform an audit based on the Contractor's contractual relationship with the State of Michigan. In such cases, the third-party administrator is required to provide the same support and cooperation. In either situation, the State's Contract Compliance Inspector will be involved.

Contractor Response to this Task:

Agreed, with the exception the State will be responsible for the payment of any third party audits, as well as any and all expenses related to any third party audits, required pursuant to this Section.

c. Billing: Billings to the State of Michigan will be agreed upon between the State and the Contractor. It is anticipated that billings for actual services rendered will be presented to the State within a two (2) week period from the end of the period for which services were provided. Charges for claims handling expenses will be separated from other service fees and will be so identified on all billing documents.

Contractor Response to this Task:

Agreed.

d. Fees: It is anticipated that the fees established under this contract will be on a per claim basis for handling the standard claims activity associated with disability related claims. This fee will be a "per claim" basis and will be all-inclusive for that claim activity. Additional service related fees, if not included in the standard per claim fee, must be specifically presented to the State's Contract Compliance Inspector and agreed to prior to acceptance. Unless otherwise specified, all data and reporting fees shall be included in the per claim fee. The basis on which such fees are to be charged shall also be provided.

Contractor Response to this Task:

Agreed, with the exception that CMI will outsource physicians, defense counsel, vocational rehabilitation, medical rehabilitation, independent adjuster for surveillance, activity checks, external subrogation fees, copy service, mileage & transportation fees, expert/witness depositions and associated fees, court reporter transcriptions, Social Security advocacy, medical reports, and Alive & Well checks and pay as an Allocated Loss Adjustment Expense (ALAE) off the specific file.



e. Staffing: The Contractor shall assure that there is adequate staffing to support all claims processing and support services required by the State of Michigan. The Contractor will assure that examiner caseloads for standard and litigated claims will be consistent with industry standards as described in various industry publications. It is expected that workers' compensation average caseloads will not exceed 150 open cases. To the extent case loads are determined by the State to be in excess of that necessary to provide the services required by the State, it is expected that the State and the third-party administrator will meet and reach a consensus as to appropriate case loads to assure appropriate services are provided. In the event consensus cannot be achieved, the recommendations of the State, with adequate industry data for support, will be instituted. Staffing should include account manager, claims supervisors, claims examiners, claims processors, medical review technicians, physicians, utilization review specialists, health professionals, psychiatric claim review specialists, case managers, litigation claim specialists, qualified investigators, qualified investigation supervisors, billing specialists, accountants, and data service specialists. Any intent to utilize outside contractors to staff any of these functions should be noted in the response to this bid document.

Contractor Response to this Task:

Agreed, with the exception that (by way of example and not limitation) CMI will routinely outsource physicians, vocational rehabilitation, medical rehabilitation, independent adjusters for surveillance, and activity checks.

f. Turnaround Times and Accuracy: The Contractor will be required to provide services as described in the Contractor on an accurate and timely basis as described elsewhere in this document. Claim accuracy will be defined by industry standards. It is the expectation of the State that all claims will be processed with at least 95% accuracy. Payment accuracy must meet or exceed 99%. The time frames specified in this Contract will be minimum acceptable limits. For workers' compensation claims, three-point contact shall be made within three (3) business days from the time the claim is received by the third party administrator. This three-point contact shall include contact with the employee, the employing agency, and the treating provider. Other timing definitions shall be contained in the specific task descriptions contained below. All applicable state regulations regarding the timely reporting and notification requirement shall be the responsibility of the third-party administrator on behalf of the State of Michigan.

Contractor Response to this Task:

Agreed.

3. Claims Processing

a. Claim File Documentation: Claim files shall be documented accurately with all relevant information associated with the particular claim. Sections shall be established in the claim file to adequately distinguish between required documentation, legal filings, legal notices, medical information, payments, examiner's notes, etc. Documents within each section shall be maintained in chronological order unless otherwise agreed to between the State and the contractor. The use of color-coding is acceptable with adequate documentation of file layout to support such coding. Information in the claim files shall be kept current to within 24 hours of receipt. Adequate and accurate documentation is required so as to support any decisions that are being made relative to the claim. Claim files shall be accurately reviewed within five (5) business days of receiving a claim, and information necessary to make an informed and accurate decision on the claim shall be obtained within ten (10) business days from receiving the claim. The documentation requirement includes a disability assessment, return to work or transitional employment potential, employer information, treating provider information, and any other documentation that will assist in providing a clear and accurate picture of the true claim status. All claim documents, electronic files and notepads shall be the property of the State of Michigan.

Contractor Response to this Task:

Agreed.

b. Claim Payments: Unless otherwise determined by the State of Michigan, the third-party administrator shall be responsible for processing all claim payments to eligible state employees. The third-party administrator shall provide claim payments accurately, with a payment error rate of not more than one percent (1%). Overpayments shall be the responsibility of the third-party administrator and any recoveries shall be credited to the appropriate state account. All claim payments and associated claim expenses shall be recorded as associated with the individual claim. Claim payments are to be made as prescribed by the State of Michigan and the Workers' Disability Compensation Act.



Contractor Response to this Task:

Agreed.

c. Contact with Employees: The third-party administrator shall ensure contact with claimants within three (3) business days from initial receipt of the claim. As a representative of the State of Michigan, contact with employees by the third-party administrator shall be conducted in a polite and professional manner. Examiners or other representatives of the third-party administrator who fail to conduct themselves in a manner deemed appropriate by the State of Michigan shall be removed from the State account. Specific standards for this evaluation, based on customer surveys conducted by the third-party administrator and the State will be used to evaluate the third-party administrator's representatives. The Account Manager and Contract Compliance Inspector will establish specific evaluation criteria. The decision of the State Contract Compliance Inspector will be final. The third-party administrator shall assist the State of Michigan in developing informational material that informs the employee of their rights under the State's disability programs and shall assure that information is readily provided to assist employees. A toll-free number should be established to allow for toll-free claim reporting and separately for toll-free inquiry and information.

Contractor Response to this Task:

Agreed.

d. Independent Medical Examinations: At a minimum, the third-party administrator shall request independent medical examinations (IME's) when:

1. The treating physician is not cooperating or not in communication.
2. There is a question of disability.
3. There are only subjective complaints.
4. There is a question of how a physician is handling a case.
5. There is a need to substantiate medical findings.

Tracking of IME costs and outcomes will be expected under this contract. Results will be reported to the State's Contract Compliance Inspector.

Contractor Response to this Task:

Agreed.

e. Medical Case Management: A medical consultant or medical case manager, defined as an employee with a relevant clinical background in nursing or medicine (RN, MD), shall be utilized, at a minimum, in the following situations.

1. When an employee is not responding to treatment.
2. When there is a lack of compliance with medical regimen.
3. When there is a chemical dependency.
4. When there is a long-term physiotherapy.
5. When there is prescription medication dispensed long-term (over 1 year).
6. When physician visits are more than is typical for the type of injury/illness.
7. When referrals are more than typical for the type of injury/illness.
8. When prescriptions are more than typical for the type of injury/illness.
9. When the case extends substantially beyond the expected resolution date.
10. When the medical situation is a mix of occupational/non-occupational conditions.
11. When the employee and/or their support system are not capable of coordinating services, setting appointments or comprehending medial needs.
12. When the employee does not comply with medical treatment.
13. When the original injury or illness causes a secondary health problem to occur.

Contractor Response to this Task:

Agreed, with the exception that third party expenses associated with any of the above will be charged to the affected case file as an Allocated Loss Adjustment Expense (ALAE).



f. Methods for Claim Receipt: The third-party administrator shall be able to receive claims by any method, including telephone (toll-free), facsimile (fax), e-mail, regular mail delivery, electronic data transfer, and Internet based claim service. While all of these claims reporting methods are not currently in place, it is expected that the third-party administrator shall be in a position to implement any of these claim-reporting methodologies upon request. Electronic protocols for electronic data transfer will be identified by the State of Michigan at the time such service becomes available. It shall be the responsibility of the third-party administrator, within the scope of this contract, to develop at their own expense, the necessary electronic interfaces or file transfer protocols to allow such electronic file transfer to occur. The TPA must also interface with the long-term disability claims administrator.

Contractor Response to this Task:

Agreed.

g. Subrogation: The third-party administrator is required to review and monitor all claims which might involve third-party liability and to pursue subrogation against any and all outside parties for which this subrogation may be appropriate. The Contractor must document all subrogation standard operating procedures. Contact with the State's Contract Compliance Inspector is recommended prior to actively pursuing a questionable third-party situation. All amounts received in subrogation shall be provided to the State of Michigan as a reduction of the cost of the claim expenses recorded for that specific claim. Subrogation expenses are to be included as part of the per claim fees assessed by the third-party administrator as part of the normal claim fee. This includes bankruptcy court filing and action for overpayment recoveries.

Contractor Response to this Task:

Agreed, with the exception that all internal subrogation efforts are included, whereas any outside subrogation fees will be charged to the affected case file as an Allocated Loss Adjustment Expense (ALAE).

h. Three Point Contact: The third-party administrator is required to document all attempts to contact the employee, the employer, and the treating provider, within three (3) business days from the time the claim is received by the third-party administrator. The information obtained from this contact shall be accurately documented in the claim file. This information shall form the basis for any subsequent decisions relative to the payment of the claim and shall be placed in the file within 24 hours of receipt. The third-party administrator is responsible for making payment decisions on behalf of the State of Michigan within the parameters described in the relevant statutes and policies of the State.

Contractor Response to this Task:

Agreed.

i. Fraud Investigation: If claimant fraud is detected, the third-party administrator is responsible for conducting investigations. All relevant evidence shall be immediately turned over to the State's Contract Compliance Inspector. The Contract Compliance Inspector or the appropriate office will maintain responsibility for investigation and will interact with Contractor's fraud unit on an as needed basis.

Contractor Response to this Task:

Agreed, with the exception that all external subrogation fees will be charged to the affected case file as an Allocated Loss Adjustment Expense (ALAE).

#### 4. Disability Management

a. The State of Michigan is active in pursuing return-to-work efforts through its disability management program. Initial claims review includes medical evaluation and review (performed by the third-party administrator's medical review personnel), transitional employment, departmental return-to-work, and interdepartmental placement. The disability management model used by the State of Michigan has five primary components.



- At risk claims
- Case management
- Rehabilitation
- Return-to-Work
- Transitional employment

Contractor Response to this Task:

Agreed.

b. At Risk Claims: The State of Michigan promotes the identification of “at risk” situations and circumstances that may lead employees to eventually be placed on one of the State’s disability programs. To the extent early identification and intervention can prevent an employee from going off work on a benefit program, the State promotes interventions for these “at risk” employees outside of the structure of the disability benefit program. It is the State’s intent for the third-party administrator to include an “at risk” component in its plan administration in order that these individuals may be provided for within the scope of the third-party administration contract. Specific details of the plan will be agreed to between the TPA and the State. The provision of services to “at-risk” employees will be documented by a licensed provider, reviewed by the employing agency, concurred with by the department representative, and supported by the State’s Contract Compliance Inspector. These services may include, but are not limited to job site analysis, rehabilitation services, and medical evaluation. The State and the TPA will jointly develop specific procedures for this program.

Contractor Response to this Task:

Agreed, with the exception that any external “at risk” fees will be charged to the affected case file as an Allocated Loss Adjustment Expense (ALAE).

c. Case Management: The State of Michigan promotes case management in each department throughout state government. Each department typically has a Case Manager who is designated as the individual department representative dealing with the third-party administrator. There are approximately 30 Department Case Managers. It is the responsibility of the third-party administrator to assure that all efforts are made to assist the departmental case managers and, when requested, to participate in any case management meetings reasonably scheduled by the department. The state has identified a Statewide Disability Manager who shall, in conjunction with the State’s Contract Compliance Inspector, coordinate specific case management activities between the state departments and the third-party administrator. Any case specific issues between the department and the third-party administrator that cannot be resolved shall be referred to the State’s Contract Compliance Inspector and the Contractor’s Account Manager. The decision of the State’s Contract Compliance Inspector will be final. The State’s Contract Compliance Inspector, for the purpose of addressing claim specific issues, may also reasonably schedule periodic meetings. It is required that the third-party administrator provide a senior claims person or case manager to participate in these meetings.

Contractor Response to this Task:

Agreed.

d. Rehabilitation: The State of Michigan supports and promotes the use of rehabilitation services as a means to enhance a claimant’s ability to return to work in a more expeditious manner. The third-party administrator shall support this rehabilitation philosophy to assure that state employees receive the most beneficial rehabilitation services possible consistent with their specific disability situations. The Contractor will be responsible for utilizing rehabilitation providers that are acceptable to the State of Michigan.

Contractor Response to this Task:

Agreed, with the exception that any external rehabilitation fees will be charged to the affected case file as an Allocated Loss Adjustment Expense (ALAE).

e. Return-To-Work: The return-to-work component is a process whereby the employing department attempts to identify areas within the employee’s existing department where the employee can return to work, with or without accommodation. The third-party administrator is required to work with departmental case managers in an attempt to promote this return to work effort, and to assure that the information and documentation necessary to assist case managers is readily available in the claim file.



Contractor Response to this Task:

Agreed.

f. Transitional Employment: The State of Michigan is implementing transitional employment throughout state government. This process includes the identification and development of tasks into temporary assignments which employees are placed into for limited periods of time. Transitional employment is only used when an employee would be returning to their regular job in less than six months. These transitional assignments are intended to be temporary and under normal circumstances, the entire transitional employment process will not exceed 6 months. While employees are participating in transitional employment assignments, the third-party administrator is required to support the effort and allow the employee entry or re-entry into the benefit program without penalty for participation in the transitional employment program.

Contractor Response to this Task:

Agreed.

## 5. Recordkeeping

Claim File Documentation: All files shall be documented in a manner that allows the casual reviewer the ability to quickly determine the current status of a claim. Files shall be documented with all pertinent material related to the claim and such documentation shall be current in the file within 24 hours from the date of receipt by the third-party administrator. Claim files shall be separated to reflect the distinct aspects of the claim. Examples include medical documentation, legal notices, litigation correspondence, payment information, etc. Claim examiner notes shall be current within 24 hours and shall be electronically generated with hard copies placed in the claim file. Employee Health Management shall have electronic access to, and be able to copy into a Microsoft Office format, all claim information maintained by the third-party administrator. Such electronic information shall include all information necessary to identify and determine current status and activity for a claim. Care shall be taken to assure that any HIPPA regulations are not violated.

Contractor Response to this Task:

Agreed.

- a. Documentation Ownership: All hard copy and electronic claim files, data and documentation associated with all claim files shall remain the property of the State of Michigan. Unless specifically agreed otherwise, any software developed by the third-party administrator utilizing funds provided under this contract will become the property of the State of Michigan. Any capital equipment purchased utilizing funds provided under this contract shall remain the property of the State of Michigan.

Contractor Response to this Task:

Agreed, with the exception that any capital equipment purchased by CMI belongs to CMI.

- b. Freedom of Information Act: The Freedom in Information act applies to information prepared by the State of Michigan and which is a form, electronic or hard copy, available for reproduction. Reports need not be created, nor are draft notes or draft documents accessible under the Freedom of Information Act. Any and all requests for information under the Freedom of Information Act that relates to files or data maintained by the third-party administrator on behalf of the State of Michigan shall be directed to the State's Contract Compliance Inspector for proper disposition.

Contractor Response to this Task:

Agreed.

- c. State Access to Files: Upon providing reasonable verbal or written notice to the third-party administrator of the need for such information, the State of Michigan shall receive all paper and electronic files and have electronic and paper access to any and all files maintained by the third-party administrator. All requests for such information shall be provided through the State's Contract Compliance Inspector.



Contractor Response to this Task:

Agreed.

- d. State Reporting Requirements: All reporting requirements contained in Insurance Regulations, other State Statutes, Federal Legislation, or State Directives shall be the responsibility of the third-party administrator on behalf of the State of Michigan.

Contractor Response to this Task:

Agreed.

## 6. Litigation Support

- a. Coordination: The third-party administrator shall assure claims examiner physical presence at all mediations unless otherwise agreed to between the State and the third-party administrator. Once it is apparent that a claim is going into litigation, the third-party administrator is responsible for notifying the appropriate division of the Attorney General, as identified by the State's Contract Compliance Inspector. The specific process for this notification to occur and the forms and protocols shall be established by the Attorney General and the State's Contract Compliance Inspector, and provided to the third-party administrator. Any disagreement with the process, documentation or the procedures will be resolved between the Contractor's Account Manager and the State's Contract Compliance Inspector.

Contractor Response to this Task:

Agreed.

- b. File Documentation: The Third-party administrator shall provide timely and accurate file documentation to the Attorney General in the form and nature defined by the State of Michigan. The utilization of the third-party administrator's forms and documents shall be within the consent and approval of the State of Michigan. Once a claim is in litigation, the responsibility for the claim rests with the appropriate division of the Attorney General and the staff attorney assigned to the claim. It is the responsibility of the third-party administrator to provide any and all support requested by the designated Attorney General representative in an accurate and timely manner satisfactory to the Attorney General, subject to agreement between the Contractor's Account Manager and the State's Contract Compliance Inspector. It is anticipated that the third-party administrator will continue to monitor and provide supporting information for all claims in litigation.

Contractor Response to this Task:

Agreed.

- c. Litigation Investigations: Unless determined otherwise by the State, the third-party administrator shall be responsible for conducting all investigations for the State's workers' compensation claims. Litigated claims are a special component of that process. Once a litigated claim has been assigned to the third-party administrator for investigation, the designated investigator should contact the assigned Attorney General representative to determine what the nature of the investigation should be, what type of investigation should occur, what special information or circumstance should be considered, and what special instructions the Attorney General may have for the investigation. The Attorney General or designee shall control all investigation activity conducted on behalf of the State of Michigan for all litigated claims. Investigations performed by the third-party administrator shall be performed in a timely manner within parameters established between the investigator and the Attorney General representative. The Attorney General, with concurrence from the State's Contract Compliance Inspector, shall have the authority to identify and select "outside investigators" to perform litigation investigations on behalf of the State of Michigan. Should this occur, the third-party administrator will be advised of this fact. All billings for this outside investigation will be processed through the Attorney General to the third-party administrator for payment and inclusion in the claim expense documentation.

Contractor Response to this Task:

Agreed.



- d. Mediations: Petitions for Hearing received by the third-party administrator will be provided to the Attorney General within five (5) business days of receiving the petition. A review of the relevant issues and an accurate summary should also be provided within this time frame. For Mediations, if it is determined that legal action is required, the Carrier's response to the petition shall be filed within five (5) business days of receipt of the petition. If legal action is required, input shall be obtained from the Attorney General and Department Representative within five (5) business days from such determination. Copies of relevant material, as determined by the Attorney General, shall be provided to the Attorney General for review and input. For mediations where the third-party administrator is providing representation, the participant shall develop a comprehensive understanding of the relevant issues in the file, clarify the position of the third-party administrator, and assure concurrence from the Departmental Representative. This shall be accomplished ten (10) business days prior to the mediation. Upon attending mediation, the third-party administrator's representative shall observe and document the proceedings. Documentation shall include, at a minimum, description of the claimant's physical state, appearance, and demeanor, along with a specific analysis of the claimant's demands. If resolution does not take place, a mediation summary shall be provided to the Attorney General within five (5) business days of the hearing. If agreement is reached and payment is to be made, payments shall be made in accordance with statutory requirements, with proper documentation and notice to all relevant parties.

Contractor Response to this Task:

Agreed.

- e. Pre-Trials: Pre-trial referrals shall be made to the Attorney General at least three (3) weeks prior to the pre-trial date. A quarterly review shall be conducted of all litigated files to assure that all documentation and notices are adequate. The third-party administrator shall acquire and review the summary of the pre-trial hearing and discuss with the Attorney General assigned. Decisions relative to the claim shall be promptly documented in the claim file with appropriate notices being provided in a timely manner. Any payments required shall be processed within the time frames and in accordance with statute or procedure established by the State of Michigan. Any claim going to trial requires the third-party administrator to perform investigation, acquire documentation, conduct witness interviews, conduct background checks and schedule any medical examinations as requested by the Attorney General assigned to the claim. Accurate and complete documentation is required, along with timely completion of all tasks assigned by the Attorney General.

Contractor Response to this Task:

Agreed.

- f. Fraud Investigation: If claimant fraud is detected, the case, including all relevant evidence shall be immediately turned over to the State's Contract Compliance Inspector. The State's Contract Compliance Inspector, or the appropriate office, will maintain responsibility for investigation and will interact with Contractor's fraud unit on an as needed basis.

Contractor Response to this Task:

Agreed.

## 1.2 Roles and Responsibilities

### 1.201 Contractor Staff, Roles, and Responsibilities

See Article 1, Attachment B for Organization Chart.

The State reserves the right to approve the Contractor's assignment of Key Personnel to this project and to recommend any reassignment of any personnel deemed unsatisfactory by the State. The State and the Contractor agree that the following personnel are Key Personnel for purposes of this Contract:



- Account Manager
- Dedicated Claims Team Leader
- Senior Clinician
- Implementation Manager
- Lead IT Consultant
- Claim Supervisor
- Others as Agreed Upon by State and Contractor

Contractor Response to this Task:

Agreed.

### 1.202 State Staff, Roles, and Responsibilities

State staff include the State's Contract Compliance Inspector, disability manager, departmental analyst, financial coordinator and data coordinator.

### 1.203 Other Roles and Responsibilities

Other staff that may be involved include the Auditor General Office, Office of Financial Services, Attorney General's Office for litigation, and outside contractor's for consulting services.

## 1.3 Project Plan

### 1.301 Project Plan Management

Project Control

- 1) The Contractor will carry out this project under the direction and control of the State's Contract Compliance Inspector, Employee Health Management, and Office of the State Employer.
- 2) Monthly meetings will be conducted with the Contractor's project manager or designee for the purpose of reviewing progress and providing necessary guidance to the contractor in solving problems, which arise. In addition, these will be ongoing communication with the contract team.
- 3) As agreed upon by the respective parties, the contractor will submit written summaries of progress outlining 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 State's Contract Compliance Inspector; and notification of any significant deviation from previously agreed-upon work plans.
- 4) Within 30 working days of the award of the contract, the contractor will submit to the Employee Health Management Division Contract Compliance Inspector for final approval a work plan. The plan must include the following:
  - 1) The contractor's project organizational structure.
  - 2) The contractor's staffing table with names and title of key personnel assigned to the project as well as other necessary staff.
  - 3) The project breakdown showing sub-projects, activities and tasks, and resources required and allocated to each for implementation and start-up. Implementation tasks should include marketing, statewide seminars, promotional material, and staffing for all presentations.
  - 4) The time-phased implementation plan in the form of a graphic display, showing each event, task, and decision point in your work plan.

Within 60 days of the award of the contract, the Contractor will attend a project kick-off meeting to present its proposed implementation plan. This plan will include the Contractor's documented approach for handling existing open claims as of the contract effective date.



### 1.302 Reports

#### Reporting Documentation

All records and bills shall be maintained in a suitable electronic format. The system must be able to convert all the previous years of data into electronic format compatible with Microsoft Office.

- a. Ad Hoc Reports: On an as needed basis, the State's Contract Compliance Inspector may request Ad Hoc reports. It is the responsibility of the third-party administrator to comply with such requests. If the requests are of such magnitude to require additional information technology resources or staffing commitments, the third-party administrator shall document such requirements and provide a cost estimate to the State. Further development of such ad-hoc reports will only proceed with written authorization from the State's Contract Compliance Inspector. Any requests for ad-hoc reporting from other than the State's Contract Compliance Inspector shall be directed to the State's Contract Compliance Inspector for review and approval.

Contractor Response to this Task:

Agreed.

- b. Monthly Invoices: Invoices will be provided to the State of Michigan on a monthly basis. Invoices will be provided within ten (10) working days from the end of the month for which the bill applies. Invoices should include all identifiable costs associated with providing administrative services under this agreement and shall be defined and broken down by department and agency codes. Any changes in the invoices must be confirmed with Employee Health Management.

Contractor Response to this Task:

Agreed.

- c. Quarterly Workers' Compensation Database

The State requires the TPA to provide a quarterly electronic database (e.g., Microsoft Access) on a compact disc, which reflects claims activity, at a minimum, for the past ten (10) years. This database shall be provided quarterly and shall reflect the losses paid in the quarter, the fiscal year and the lifetime as of the valuation date, for claims incurred for the specific years identified in the report. The database includes the payment data, reports and claim details. The database must include the ability to edit reports and run additional customized reports on any combination of the data elements included in the preprogrammed reports.

The employee demographic information will be provided by the state.

The data shall include, but not limited to the following: NCCI Codes, Categories and Descriptions for body part, nature, general category and cause; incident detail, work task performed at time of injury, where the event occurred/site and object or substance that directly injured or made the employee ill/source. The reports shall also include claim number, claimant's name, supervisor's name and their respective employee identification number and social security number (potentially not included), claim status, medical/indemnity, state job classification, shift, and state department and agency, process level, and work site/location codes and descriptions and locations addresses. The date of injury or onset of illness, claim received date, claim closed date, lost work days from date of injury/illness incident, will also be included. Vocational Rehabilitation (VR) data includes: dates VR was started and closed, claimant's name, vendor company, vendor name, and comments. The following Workers' Compensation costs must also be included: benefit amount, expense amount, medical, indemnity and vocational rehabilitation amounts, special assistant attorney general amounts, other loss adjustment expenses, date claim filed, paid to date (quarterly, fiscal year and lifetime), and current and estimated return to work dates.

Contractor Response to this Task:

Agreed.



- d. Preprogrammed Reports
1. Quarterly Open Claim and Case Management Reports: Each quarter, the third-party administrator shall provide the State's Contract Compliance Inspector or designees with a report summarizing all open claims. This report shall provide an inventory and breakdown of claims by department /agency.
  2. Department and Agency Injury Illness Summary.
  3. Top Ten Injury Illness Report.
  4. Annual MIOSHA 300, 300A & 301 logs and reports, Known or Suspected Occupational Disease Report OH-51.
  5. BWC 701 Notice of Compensation Payments, BWC 100 Employer's Basic Injury, First Report of Injury, Report BWC 107 Notice of Dispute, Return to Work Assessment, First Workers Compensation Check Release, Employee's Report of Injury, Travel Reimbursement Form, Partial Payment Form, First Report of Injury.
  6. Settlement Reports: Each quarter the third-party administrator shall provide the State's Contract Compliance Inspector or designees, a copy of a report that reflects the settlements for State departments for each month of the reporting period. This report shall be provided within 15 business days from the end of the reporting period and shall include monthly and quarterly summaries when appropriate. The information on this report shall be broken down by department and shall reflect the total dollar amount and number of settlements.
  7. Monthly trust account reconciliation report: This report provides a monthly reconciliation of the funds deposited in the third party's (TPA's) account, against the claims that have been actually paid and the checks that have been returned or that may not have cleared the account.
  8. Cost containment report: This quarterly report provides a summary of the cost containment efforts on behalf of the state through the use of fee schedule and utilization review efforts. The report should reflect the total billed and the amount saved unitizing each cost containment technique.
  9. Rehabilitation Reports: A quarterly report in Excel format, that provides, at a minimum, claimant name, rehabilitation vendor, adjuster, date rehabilitation initiated, brief statement of the claim status. A separate report for closed rehabilitation efforts will also include an outline of the reason for closure.

Contractor Response to this Task:

Agreed, with the exception that the second sentence in number six to read: "This report shall be provided within 15 business days from the end of the reporting period and shall include monthly and quarterly summaries where appropriate."

## 1.4 Project Management

### 1.401 Issue Management

All issues will be addressed between the Contractor's account manager and the State's Contract Compliance Inspector. The Contractor must have an issue management process to elevate issues to the highest level of senior management.

Contractor Response to this Task:

Issues need to be taken care of in an expeditious manner, while at the same time taking due diligence to insure all sides of an issue are fairly and accurately portrayed. All contract policy and procedure issues involving this contract shall be the responsibility of the State's contract administrator and the vendor's account manager to solve.



### 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. The Contractor must have a risk management process that will be utilized for this project, including responsible parties, phone numbers and e-mail addresses. Identify how issues will be captured, reported and escalated.

#### Contractor Response to this Task:

Our risk management process is very similar as it involves the following 5 phases:

- Risk Identification
- Risk Analysis and Measurement
- Risk Control
- Risk Finance
- Risk Administration

CMI continually applies this discipline to all of our activities and new procedures. The responsible parties vary depending on the area being evaluated, but for purposes of this contract, Michael Hoffer will be the responsible party. His phone number is 517.540.3113. His email address is [mhoffer@hanover.com](mailto:mhoffer@hanover.com). CMI's management team meets on a regular basis to perform the first phase of the process for all projects/functions. When risk is identified the remaining phases will be applied accordingly.

### 1.403 Change Management

Necessary change for the effective administration of the Contract will be recommended by either the State's Contract Compliance Inspector or the contractor accounts manager. Both parties must agree to these changes.

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

## 1.5 Acceptance

### 1.501 Criteria

The acceptance criteria used by the State to determine Acceptance of the Services and/or Deliverables is stated in Sections 2.084 through 2.088.

### 1.502 Final Acceptance

Acceptance is tied to adequate performance of required Services as described in section 1.104 and the Contractor must meet the Performance Guarantees in Article 1, Attachment D.



**1.6 Compensation and Payment**

**1.601 Compensation and Payment**

State shall pay Contractor a per claim, per employee or flat fee amount that is provided in this Contract for the performance of all activities necessary for or incidental to the performance of work as set forth in this SOW. See Article 1, Attachment A for pricing.

**1.7 Additional Terms and Conditions Specific to this SOW**

**1.701 Additional Terms and Conditions Specific to this SOW - Reserved**



**Attachments**

**Article 1, Attachment A - Pricing**



BID FORM A	Year 1	Year 2	Year 3			
<b>Our Estimate of New/Open Claims</b>						
Indemnity	1,000	1,000	1,000			
Medical Only	3,500	3,500	3,500			
<b>Our Estimated Staffing</b>						
Indemnity @ 150 claims per adjuster	7	7	7			
Medical Only @ 300 claims per adjuster	12	12	12			
Total Adjusters	18	18	18			
Staff Support (estimated 3-5 support staff)	3	3	3			
Claim Supervisor	1	1	1			
Account Executive	1	1	1	Total: 23		
<b>Staffing Used to Develop Your Price Proposal</b>						
Indemnity Adjusters	12	12	12			
Medical Only Adjusters	3	3	3			
Dedicated R.N.	1	1	1			
Support Staff	5	5	5			
Supervisory Staff	1	1	1			
Account Executive	1	1	1	Total: 23		
<i>*Staffing module is reflective of current caseload, new claims and anticipated file closures</i>						
Indicate Your Per Claim Fee To Handle New Claims						
Indemnity:	\$ 840.00	\$ 840.00	\$ 840.00			
Medical Only:	\$ 135.00	\$ 135.00	\$ 135.00			
One Time Claim Set-Up Fees	\$0.00	\$0.00	\$0.00			
In Addition to the Indemnity Checks, It Is Anticipated There Will Be Approx. 30,000 Medical Checks Issued Annually						
Check Writing Fees	\$0.00	\$0.00	\$0.00			
Other Fees (Describe)						
<b>TOTAL COST NEW CLAIMS</b>	<b>\$ 1,312,500.00</b>	<b>\$ 1,312,500.00</b>	<b>\$ 1,312,500.00</b>			



<b>BID FORM B</b>							
	As of 9/30	2003	2003	2004	2004	2005	2005
5 Year Claim Aging Profile			Med. Only		Med. Only		Med. Only
	Claim Incurred In						
	2005					959	504
	2004			1,374	895	215	16
	2003	1,762	1212	275	46	149	15
	2002	318	37	167	12	102	3
	2001	193	8	123	6	85	3
	2000	124	3	98	1	66	1
	1999	100	2	73	2	55	1
	1998	72	1	63	1	50	2
	Prior to 1998	738	**	653	**	598	**
<b>Takeover Claims:</b>							
Our Estimate of Takeover Claims		Year 1	Year 2	Year 3			
	Indemnity	1750	1000	800			
	Medical Only	450	100	75			
	<b>Total Takeover Claims</b>	<b>2200</b>	<b>1100</b>	<b>875</b>			
Your Claim Estimate Used to Price Takeover Claims							
	Indemnity	715	695	695			
	Medical Only	10	10	10			
		<i>*Remaining open original tail claims prior to 10/1/02</i>					
Indicate Your Fee To Handle Takeover Claims							
	Indemnity	\$ 420.00	\$ 420.00	\$ 420.00			
	Medical Only	\$0.00	\$0.00	\$0.00			
<b>TOTAL COST FOR TAKEOVER CLAIMS</b>		<b>\$ 300,300.00</b>	<b>\$ 291,900.00</b>	<b>\$ 291,900.00</b>			
Annual Administration Fees		\$ 340,000.00	\$ 340,000.00	\$ 340,000.00			
All Implementation Fees		\$0.00	\$0.00	\$0.00			
All Data Conversion Charges		\$0.00	\$0.00	\$0.00			
All License Fees	Estimated 6 Users	\$0.00	\$0.00	\$0.00			
All Training and Travel Fees		\$0.00	\$0.00	\$0.00			
Other Fees (Describe)							
Other fees assessed on a TBD or actual cost basis for items such as actuarial services, ad hoc reporting, attorney fees, medical record fees, etc.							
<b>TOTAL ANNUAL ADMINISTRATION IMPLEMENTATION, COVERSION, LICENSE, TRAINING AND OTHER FEES-----</b>		<b>\$ 340,000.00</b>	<b>\$ 340,000.00</b>	<b>\$ 340,000.00</b>			
<b>TOTAL BID FORM A and BID FORM B</b>		<b>\$ 1,952,800.00</b>	<b>\$ 1,944,400.00</b>	<b>\$ 1,944,400.00</b>			





Article 1, Attachment C, D, E, F & G - Reserved



**Article 1, Attachment H**

Performance Standards / Service Level Agreements

The Contractor must report on and track the following measures/standards in order to measure compliance with performance. Contractor based performance audits may be verified through external audit activity. The Contractor must agree to allow third party audits to measure performance standards.

The State's Contract Compliance Inspector and Contractor's Account Manager will evaluate performance guarantees. The final decision regarding performance penalties shall be that of the State's Contract Administrator.

The Contractor agrees to performance guarantees for the following:

Performance Category	Performance Criteria	Standard of performance	percentage of fee put at risk
Customer service to claimant and to State of Michigan (per ACD – generated reports)	Telephone response time/wait time	standard of performance at 95% ≤ 1 minute	.25%
	Average speed of answer	30 seconds	.25%
	Abandonment rate	≤ 5%	.25%
	% of calls that get a busy signal	≤ 1%	.25%
Benefit	Three point contact	Within 24 hours of claim notification. Claim decision within 5 business days of receiving necessary information	1.25%
Timeliness of payment of claims	Payment must be issued within 7 days of the end of the time period covered by the payment	98% depending on timeliness of client reporting	.25%
Scheduling independent medical exams	Average Time to Schedule IME's	Exams scheduled within 5 days of notification with receipt of identifiable need data	.25%
Financial accuracy	Total claim dollars paid correctly divided by total dollars paid	99%	.25%



Performance Category	Performance Criteria	Standard of performance	percentage of fee put at risk
Claim coding accuracy	% of claims coded accurately divided by total number of claims	95%	.25%
Data tracking, reporting, analyses, accuracy (standard reports only, not Ad Hoc)	Delivery date and accuracy of management reports versus end of reporting period	Delivery within 20 calendar days; accuracy as determined by the State	.25%
Account management	Phone or mail based survey of key members of client benefits team	Average of 4 on a 5 point scale	.50%
Implementation (with key deliverables being planned and negotiated with client)	Ability to comply with all key deliverable dates and timing	Must meet 90% of all implementation criteria	.50%
Program outcomes	<ul style="list-style-type: none"> <li>▪ Duration</li> <li>▪ # of lost time days</li> <li>▪ # of claims</li> <li>▪ Total \$ paid/saved</li> </ul>	Accurate reporting 30 days after the end of the reporting period	.25%
Rehabilitation Costs	Processing "pass-through" rehabilitation costs to selected vendors	Completed by next billing cycle (depending on timeliness of receipt of data)	.25%

\*Note: Reviewing / auditing of files is based on audit of up to 25% of the files.



## Article 2 General Terms and Conditions

### 2.010 Contract Structure and Administration

#### 2.011 Definitions

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

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

#### 2.012 Attachments and Exhibits

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

#### 2.013 Statements of Work

- (a) The parties agree that the Services/Deliverables to be rendered by Contractor pursuant to this Contract (and any future amendments of it) will be defined and described in detail in Statements of Work or Purchase Orders (PO) executed under this Contract. Contractor shall not be obliged or authorized to commence any work to implement a Statement of Work until authorized via a PO issued against this Contract, or an amendment to this Contract (see 2.106). Contractor shall perform in accordance with this Contract, including the Statements of Work/Purchase Orders executed under it.
- (b) Unless otherwise agreed by the parties, each Statement of Work (as defined in Article 1) will include, or incorporate by reference to the appropriate Contract Article 1 Attachment **A through H** 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, Purchasing Operations ("PO") and Office of the State Employer – Employee Health Management Division (collectively, including all other relevant State of Michigan departments and agencies, the "State"). DMB-PO is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. **DMB-PO 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 Purchasing Operations for this Contract is:

Melissa Castro, CPPB  
Buyer Manager  
Purchasing Operations  
Department of Management and Budget  
Mason Bldg, 2nd Floor  
PO Box 30026  
Lansing, MI 48909  
CastroM@michigan.gov  
517-373-0810

#### 2.015 Contract Compliance Inspector

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

Ken Swisher  
Department of Management and Budget  
Office of the State Employer  
PO Box 30026  
Lansing, MI 48909  
swisherk@michigan.gov  
517-373-0438

#### 2.016 Project Manager

The following individual will oversee the project:



Name: Ken Swisher  
Department of Management & Budget  
Office of the State Employer – Employee Health Management Division  
Address: 400 S. Pine St., 4<sup>th</sup> Floor  
City: Lansing  
State & Zip: Michigan 48913  
Email: swisherk@michigan.gov  
Phone: 517-373-0438

## **2.020 Contract Objectives/Scope/Background - Reserved**

## **2.030 Legal Effect and Term**

### **2.031 Legal Effect**

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

### **2.032 Contract Term**

This Contract is for a period of 3 years beginning October 1, 2006 through September 30, 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 30 days before its expiration. The Contract may be renewed for up to 5 additional 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 (30) days of shadowing unless parties agree to a different time period. The Contractor with the State shall review any Key Personnel replacements, and appropriate transition planning will be established. Any Unauthorized Removal may be considered by the State to be a material breach of the Contract, in respect of which the State may elect to exercise its rights under **Section 2.210**.
- (v) It is acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of the Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under **Section 2.210**, the State may assess liquidated damages against Contractor as specified below.

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

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

- (c) Re-assignment of non-Key Personnel. Prior to re-deploying to other projects, at the completion of their assigned tasks on the Project, teams of its non-Key Personnel who are performing Services on-site at State facilities or who are otherwise dedicated primarily to the Project, Contractor will give the State at least ten (10) Business Days notice of the proposed re-deployment to give the State an opportunity to object to the re-deployment if the State reasonably believes such team's Contract responsibilities are not likely to be completed and approved by the State prior to the proposed date of re-deployment.



(d) Re-assignment of Personnel at the State's Request. The State reserves the right to require the removal from the Project of Contractor personnel found, in the judgment of the State, to be unacceptable. The State's request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good-faith reasons. Replacement personnel for the removed person shall be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with removed personnel results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable Service Level Agreements (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, 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.

(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>.

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

##### **2.062 Software - Reserved**

##### **2.063 Hardware - Reserved**

##### **2.064 Equipment to be New and Prohibited Products**

###### **(a) Equipment to be New**

If applicable, all equipment provided under this Contract by Contractor shall be new where Contractor has knowledge regarding whether the equipment is new or assembled from new or serviceable used parts that are like new in performance or has the option of selecting one or the other. Equipment that is assembled from new or serviceable used parts that are like new in performance is acceptable where Contractor does not have knowledge or the ability to select one or other, unless specifically agreed otherwise in writing by the State.

###### **(b) Prohibited Products**

The State will not accept salvage, distressed, outdated or discontinued merchandise. Shipping of such merchandise to any State agency, as a result of an order placed against the Contract, shall be considered default by the Contractor of the terms and conditions of the Contract and may result in cancellation of the Contract by the State. The brand and product number offered for all items shall remain consistent for the term of the Contract, unless Purchasing Operations has approved a change order pursuant to **Section 2.106**.

#### **2.070 Performance**

##### **2.071 Performance, In General**

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

**2.072 Time of Performance**

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

**2.073 Liquidated Damages**

The parties acknowledge that delays beyond 5 days in the issuing of disability claim payments will interfere with the timely and proper completion of the Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any such delay. Therefore, Contractor and the State agree that in the case of any such delay in respect of which the State does not elect to exercise its rights under **Section 2.191**, the State may assess liquidated damages against Contractor as specified in this Section.

If the delay occurs, then the State shall be entitled to collect liquidated damages in the amount of \$50,000.00 and an additional \$1000.00 per day for each day Contractor fails to remedy the payment and documentation delay.

**2.074 Bankruptcy**

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

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

**2.075 Time is of the Essence**

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

**2.76 Service Level Agreements (SLAs)**

- (a) SLAs will be completed with the following operational considerations:
- (i) SLAs will not be calculated for individual Incidents where any event of Excusable Failure has occurred as defined in **Section 2.202**,
  - (ii) SLAs will not be calculated for individual Incidents where loss of service is planned and where the State has received prior notification and/or coordination.
  - (iii) SLAs will not apply if the applicable Incident could have been prevented through planning proposed by Contractor and not implemented at the request of the State. In order to invoke this consideration, complete documentation relevant to the denied planning proposal must be presented to substantiate the proposal.



(iv) Time period measurements will be based on the time Incidents are received by the Contractor and the time that the State receives notification of resolution based on 24x7x365 time period, except that the time period measurement will be suspended based on the following (“Stop-Clock Conditions”):

1. Time period(s) will not apply where Contractor does not have access to a physical State Location and where access to the State Location is necessary for problem identification and resolution.
2. Time period(s) will not apply where Contractor needs to obtain timely and accurate information or appropriate feedback and is unable to obtain timely and accurate information or appropriate feedback from the State.

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

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

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

## **2.080 Delivery and Acceptance of Deliverables**

### **2.081 Delivery Responsibilities**

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

(a) Shipment responsibilities - Services performed/Deliverables provided under this Contract shall be delivered “F.O.B. Destination, within Government Premises.” The Contractor shall have complete responsibility for providing all Services/Deliverables to all site(s) unless otherwise stated. Actual delivery dates will be specified on the individual purchase order.

(b) Delivery locations - Services will be performed/Deliverables will be provided at every State of Michigan location within Michigan unless otherwise stated in the SOW. Specific locations will be provided by the State or upon issuance of individual purchase orders.

(c) Damage Disputes - At the time of delivery to State Locations, the State shall examine all packages. The quantity of packages delivered shall be recorded and any obvious visible or suspected damage shall be noted at time of delivery using the shipper’s delivery document(s) and appropriate procedures to record such.

Where there is no obvious or suspected damage, all deliveries to a State Location must be opened by the State and the contents inspected for possible internal damage not visible externally within 14 days of receipt. Any damage must be reported to the Contractor within five (5) days of inspection. If this inspection does not occur and damages not reported within 30 days of receipt, the cure for such damaged deliveries shall transfer to the delivery signing party.

### **2.082 Delivery of Deliverables**

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

### **2.083 Testing - 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 100 pages or less and ten (10) Business Days for Written Deliverables of more than 100 pages). The duration of the State Review Periods will be doubled if the State has not had an opportunity to review an interim draft of the Written Deliverable prior to its submission to the State. The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Deliverable is approved in the form delivered by Contractor or describing any deficiencies that must be corrected prior to approval of the Deliverable (or at the State's election, subsequent to approval of the Deliverable). If the State delivers to Contractor a notice of deficiencies, Contractor will correct the described deficiencies and within 30 Business Days resubmit the Deliverable in a form that shows all revisions made to the original version delivered to the State.



Contractor's correction efforts will be made at no additional charge. Upon receipt of a corrected Deliverable from Contractor, the State will have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Deliverable to confirm that the identified deficiencies have been corrected.

### **2.086 Process for Approval of Services**

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

### **2.087 Process for Approval of Physical Deliverables**

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

### **2.088 Final Acceptance**

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

### **2.090 Financial**

#### **2.091 Pricing**

##### **(a) Fixed Prices for Services/Deliverables**

Each Statement of Work/PO issued under this Contract shall specify (or indicate by reference to the appropriate Contract Exhibit) the firm, fixed prices for all Services/Deliverables, and the associated payment milestones and payment amounts. To the extent the parties agree that certain specific Services will be provided on a time and materials basis, such Services shall be provided at the Amendment Labor Rates (**Article 1, Attachment C**). The State may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.



(b) Adjustments for Reductions in Scope of Services/Deliverables

If the scope of the Services/Deliverables under any Statement of Work issued under this Contract is subsequently reduced by the State, the parties shall negotiate an equitable reduction in Contractor's charges under such Statement of Work commensurate with the reduction in scope, using the rates in **Article 1, Attachment C** unless specifically identified in an applicable Statement of Work.

(c) Services/Deliverables Covered

For all Services/Deliverables to be provided by Contractor (and its Subcontractors, if any) under this Contract, the State shall not be obligated to pay any amounts in addition to the charges specified in this Contract.

(d) Labor Rates

All time and material charges will be at the rates specified in **Article 1, Attachment C**.

## 2.092 Invoicing and Payment Procedures and Terms

(a) Invoicing and Payment – In General

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

(ii) Each Contractor invoice will show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements. The charges for Services billed on a time and materials basis shall be determined based on the actual number of hours of Services performed, at the applicable Labor Rates specified in **Article 1, Attachment C**. Invoices for Services performed on a time and materials basis will show, for each individual, the number of hours of Services performed during the billing period, the billable skill/labor category for such person and the applicable hourly billing rate. Prompt payment by the State is contingent on the Contractor's invoices showing the amount owed by the State minus any holdback amount to be retained by the State in accordance with **Section 2.094**.

(iii) Correct invoices will be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 Public Act No. 279, MCL 17.51 et seq., within forty-five (45) days after receipt, provided the State determines that the invoice was properly rendered.

(b) Taxes (See Section 2.305 and Article 3, Section 3.022-3.024 for additional reference). 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](http://www.mi.gov/dmb/0,1607,7-150-9141_13132---,00.html) for current rates.

(d) Pro-ration

To the extent there are any Services that are to be paid for on a monthly basis, the cost of such Services shall be pro-rated for any partial month.

(e) Antitrust Assignment

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

(f) Final Payment

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

**2.093 State Funding Obligation**

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

**2.094 Holdback - Reserved****2.095 Electronic Payment Requirement**

Public Act 533 of 2004 requires that payments under this contract be processed by electronic funds transfer (EFT). Contractor is required to register to receive payments by EFT at the Contract & Payment Express website ([www.cpexpress.state.mi.us](http://www.cpexpress.state.mi.us)).

**2.100 Contract Management****2.101 Contract Management Responsibility**

(a) Contractor shall have overall responsibility for managing and successfully performing and completing the Services/Deliverables, subject to the overall direction and supervision of the State and with the participation and support of the State as specified in this Contract. Contractor's duties will include monitoring and reporting the State's performance of its participation and support responsibilities (as well as Contractor's own responsibilities) and providing timely notice to the State in Contractor's reasonable opinion if the State's failure to perform its responsibilities in accordance with Article 1, Attachment E (Project Plan) is likely to delay the timely achievement of any Contract tasks.

(b) The Services/Deliverables will be provided by the Contractor either directly or through its affiliates, subsidiaries, subcontractors or resellers. Regardless of the entity providing the Service/Deliverable, the Contractor will act as a single point of contact coordinating these entities to meet the State's need for Services/Deliverables. Nothing in this Contract, however, shall be construed to authorize or require any party to violate any applicable law or regulation in its performance of this Contract.

**2.102 Problem and Contract Management Procedures**

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

**2.103 Reports and Meetings - Reserved****2.104 System Changes**

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

**2.105 Reserved****2.106 Change Requests**

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



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

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

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

(a) Change Requests

(i) State Requests

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

(ii) Contractor Recommendations

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

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

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

(v) No proposed Change shall be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the Department of Management and Budget, 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 60 days, updated semi-monthly) and (iii) graphs showing critical events, dependencies and decision points during the course of the Contract. Any tool(s) used by Contractor for such purposes must produce information of a type and in a manner and format that will support reporting in compliance with the State's standard to the extent such information is described with reasonable detail in the Statements of Work and to the extent the related work is of sufficient project complexity and duration to warrant such reporting.

**2.110 Records and Inspections****2.111 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 20 days prior written notice, have access to and the right to examine and copy any of Contractor's books, records, documents and papers pertinent to establishing Contractor's compliance with the Contract and with applicable laws and rules, including the State's procurement rules, regulations and procedures, and actual performance of the Contract for the purpose of conducting an audit, examination, excerpt and/or transcription but the State shall not have access to any information deemed confidential to Contractor to the extent such access would require such confidential information to become publicly available. This provision also applies to the books, records, accounts, documents and papers, in print or electronic form, of any parent, affiliated or subsidiary organization of Contractor, or any Subcontractor of Contractor performing services in connection with the Contract.

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

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



### 2.112 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 45 days of the last quarterly statement that the balance appeared on or termination of the contract, whichever is earlier.
- (b) In addition to other available remedies, the difference between the payment received and the correct payment amount is greater than ten percent (10%), then the Contractor shall pay all of the reasonable costs of the audit.

### 2.120 State Responsibilities

#### 2.121 State Performance Obligations

- (a) **Equipment and Other Resources.** To facilitate Contractor's performance of the Services/Deliverables, the State shall provide to Contractor such equipment and resources as identified in the Statements of Work or other Contract Exhibits as items to be provided by the State.
- (b) **Facilities.** The State shall designate space as long as it is available and as provided in the Statement of Work, to house Contractor's personnel whom the parties agree will perform the Services/Deliverables at State facilities (collectively, the "State Facilities"). Contractor shall have reasonable access to, and unless agreed otherwise by the parties in writing shall observe and comply with all rules and regulations relating to, each of the State Facilities (including hours of operation) used by Contractor in the course of providing the Services. Contractor agrees that it will not, without the prior written consent of the State, use any State Facilities or access any State information systems provided for Contractor's use, or to which Contractor otherwise gains access in the course of performing the Services, for any purpose other than providing the Services to the State.
- (c) **Return.** Contractor shall be responsible for returning to the State any State-furnished equipment, facilities and other resources when no longer required for the Contract in the same condition as when provided by the State, reasonable wear and tear excepted.
- (d) Except as otherwise provided in **Section 2.220**, the State's failure to perform its responsibilities as set forth in this Contract shall not be deemed to be grounds for termination by Contractor. However, Contractor will not be liable for any default or delay in the performance of its obligations under this Contract to the extent such default or delay is caused by nonperformance of the State's obligations under this Contract, provided Contractor provides the State with reasonable written notice of such nonperformance and Contractor uses commercially reasonable efforts to perform notwithstanding the State's failure to perform. In addition, if the State's nonperformance of its responsibilities under this Contract materially increases the time required for Contractor's performance or Contractor's cost of performance, Contractor shall be entitled to seek an equitable extension via the Change Request process described in **Section 2.106**.

### 2.130 Security

#### 2.131 Background Checks

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

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

### 2.140 Reserved



## 2.150 Confidentiality

### 2.151 Freedom of Information

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

### 2.152 Confidentiality

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

### 2.153 Protection of Confidential Information

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

### 2.154 Exclusions

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



### 2.155 No Implied Rights

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

### 2.156 Remedies

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

### 2.157 Security Breach Notification

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

### 2.158 Survival

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

### 2.159 Destruction of Confidential Information

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

### 2.160 Proprietary Rights

### 2.161 Ownership

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

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

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

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

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

**2.164 Ownership of Materials**

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

**2.165 Standard Software**

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

**2.166 Pre-existing Materials for Custom Software Deliverables - Reserved****2.167 General Skills**

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

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

The Contractor represents and warrants:

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

(b) The Contract Appendices, Attachments and Exhibits identify the equipment and software and services necessary for the Deliverable(s) to perform and Services to operate in compliance with the Contract's requirements and other standards of performance.



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

#### **2.172 Software Warranties - Reserved**

#### **2.173 Equipment Warranty - Reserved**



## 2.174 Physical Media Warranty - Reserved

## 2.175 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. All policies of insurance required in this Contract shall be issued by companies that have been approved to do business in the State.

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

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

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



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

1. Commercial General Liability with the following minimum coverage:

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

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

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

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

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

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

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

4. Employers liability insurance with the following minimum limits:

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

5. Employee Fidelity, including Computer Crimes, insurance naming the State as a loss payee, providing coverage for direct loss to the State and any legal liability of the State arising out of or related to fraudulent or dishonest acts committed by the employees of Contractor or its Subcontractors, acting alone or in collusion with others, in a minimum amount of one million dollars (\$1,000,000.00) with a maximum deductible of fifty thousand dollars (\$50,000.00).

6. Umbrella or Excess Liability Insurance in a minimum amount of ten million dollars (\$10,000,000.00), which shall apply, at a minimum, to the insurance required in Subsection 1 (Commercial General Liability) above.

7. Professional Liability (Errors and Omissions) Insurance with the following minimum coverage: three million dollars (\$3,000,000.00) each occurrence and three million dollars (\$3,000,000.00) annual aggregate.

8. Fire and Personal Property Insurance covering against any loss or damage to the office space used by Contractor for any reason under this Contract, and the equipment, software and other contents of such office space, including without limitation, those contents used by Contractor to provide the Services to the State, up to the replacement value thereof, where such office space and its contents are under the care, custody and control of Contractor. Such policy shall cover all risks of direct physical loss or damage, including without limitation, flood and earthquake coverage and coverage for computer hardware and software. The State shall be endorsed on the policy as a loss payee as its interests appear.



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

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

## 2.190 Indemnification

### 2.191 Indemnification

(a) General Indemnification

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

(b) Code Indemnification

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

(c) Employee Indemnification

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



(d) Patent/Copyright Infringement Indemnification

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

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

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

### 2.192 Continuation of Indemnification Obligations

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

### 2.193 Indemnification Procedures

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

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

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



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

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

## **2.200 Limits of Liability and Excusable Failure**

### **2.201 Limits of Liability**

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

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

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

### **2.202 Excusable Failure**

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

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

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



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

### **2.203 Disaster Recovery**

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

### **2.210 Termination/Cancellation by the State**

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

### **2.211 Termination for Cause**

(a) In the event that Contractor breaches any of its material duties or obligations under this Contract (including a Chronic Failure to meet any particular SLA as defined in **Section 2.076**), which are either not capable of or subject to being cured, or are not cured within the time period specified in the written notice of breach provided by the State (such time period not to be less than 30 days), or pose a serious and imminent threat to the health and safety of any person, or the imminent loss, damage or destruction of any real or tangible personal property, the State may, having provided written notice of termination to Contractor, terminate this Contract in whole or in part, for cause, as of the date specified in the notice of termination.

(b) In the event that this Contract is terminated for cause, in addition to any legal remedies otherwise available to the State by law or equity, Contractor shall be responsible for all costs incurred by the State in terminating this Contract, including but not limited to, State administrative costs, reasonable attorneys' fees and court costs, and any reasonable additional costs the State may incur to procure the Services/Deliverables required by this Contract from other sources. Re-procurement costs shall not be considered by the parties to be consequential, indirect or incidental damages, and shall not be excluded by any other terms otherwise included in this Contract, provided such costs are not in excess of fifty percent (50%) more than the prices for such Service/Deliverables provided under this Contract.

(c) In the event the State chooses to partially terminate this Contract for cause, charges payable under this Contract will be equitably adjusted to reflect those Services/Deliverables that are terminated and the State shall pay for all Services/Deliverables for which Final Acceptance has been granted provided up to the termination date. Services and related provisions of this Contract that are terminated for cause shall cease on the effective date of the termination.

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

### **2.212 Termination for Convenience**

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



### 2.213 Non-Appropriation

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

(b) If funding for the Contract is reduced by law, or funds to pay Contractor for the agreed-to level of the Services or production of Deliverables to be provided by Contractor are not appropriated or otherwise made available, the State may, upon 30 days written notice to Contractor, reduce the level of the Services or the change the production of Deliverables in such manner and for such periods of time as the State may elect. The charges payable under this Contract will be equitably adjusted to reflect any equipment, services or commodities not provided by reason of such reduction.

(c) In the event the State terminates this Contract, eliminates certain Deliverables, or reduces the level of Services to be provided by Contractor pursuant to this Section, the State shall pay Contractor for all Work-in-Process performed through the effective date of the termination or reduction in level, as the case may be and as determined by the State, to the extent funds are available. For the avoidance of doubt, this Section will not preclude Contractor from reducing or stopping Services/Deliverables and/or raising against the State in a court of competent jurisdiction, any claim for a shortfall in payment for Services performed or Deliverables finally accepted before the effective date of termination.

### 2.214 Criminal Conviction

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

### 2.215 Approvals Rescinded

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

### 2.216 Rights and Obligations Upon Termination

(a) If this Contract is terminated by the State for any reason, Contractor shall (a) stop all work as specified in the notice of termination, (b) take any action that may be necessary, or that the State may direct, for preservation and protection of Deliverables or other property derived or resulting from this Contract that may be in Contractor's possession, (c) return all materials and property provided directly or indirectly to Contractor by any entity, agent or employee of the State, (d) in the event that the Contractor maintains title in Deliverables that is intended to be transferred to the State at the termination of the Contract, Contractor will transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables intended to be transferred to the State at the termination of the Contract and which are resulting from the Contract (which shall be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of such items included compensation to Contractor for the provision of warranty services in respect of such materials), and (e) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract.

(b) In the event the State terminates this Contract prior to its expiration for its own convenience, the State shall pay Contractor for all charges due for Services provided prior to the date of termination and, if applicable, as a separate item of payment pursuant to this Contract, for Work In Process, on a percentage of completion basis at the level of completion determined by the State. All completed or partially completed Deliverables prepared by Contractor pursuant to this Contract shall, at the option of the State, become the State's property, and Contractor shall be entitled to receive equitable fair compensation for such Deliverables.



Regardless of the basis for the termination, the State shall not be obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.

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

### **2.217 Reservation of Rights**

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

### **2.218 Contractor Transition Responsibilities**

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

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

(b) Information - The Contractor agrees to provide reasonable detailed specifications for all Services/Deliverables needed by the State, or specified third party, to properly provide the Services/Deliverables required under this Contract. The Contractor will provide the State with asset management data generated from the inception of this Contract through the date on which this Contractor is terminated in a comma-delineated format unless otherwise requested by the State. The Contractor will deliver to the State any remaining owed reports and documentation still in Contractor's possession subject to appropriate payment by the State.

(c) Software. - The Contractor shall reasonably assist the State in the acquisition of any Contractor software required to perform the Services/use the Deliverables under this Contract. This shall include any documentation being used by the Contractor to perform the Services under this Contract. If the State transfers any software licenses to the Contractor, those licenses shall, upon expiration of the Contract, transfer back to the State at their current revision level. Upon notification by the State, Contractor may be required to freeze all non-critical changes to Deliverables/Services.

(d) Payment - If the transition results from a termination for any reason, reimbursement shall be governed by the termination provisions of this Contract. If the transition results from expiration, the Contractor will be reimbursed for all reasonable transition costs (i.e. costs incurred within the agreed period after contract expiration that result from transition operations) at the rates specified by Article 1, Attachment C. 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 30 days), then Contractor may terminate this Contract, in whole or in part based on Statement of Work for cause, as of the date specified in the notice of termination; provided, however, that Contractor must discharge its obligations under **Section 2.250** before any such termination.

## 2.230 Stop Work

### 2.231 Stop Work Orders

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

### 2.232 Cancellation or Expiration of Stop Work Order

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

### 2.233 Allowance of Contractor Costs

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

## 2.240 Reserved

## 2.250 Dispute Resolution

### 2.251 In General

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



### 2.252 Informal Dispute Resolution

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

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

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

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

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

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

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

### 2.253 Injunctive Relief

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

### 2.254 Continued Performance

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

### 2.260 Federal and State Contract Requirements

### 2.261 Nondiscrimination

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



### 2.262 Unfair Labor Practices

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

### 2.263 Workplace Safety and Discriminatory Harassment

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

## 2.270 Litigation

### 2.271 Disclosure of Litigation

(a) Disclosure. Contractor must disclose any material criminal litigation, investigations or proceedings involving the Contractor (and each Subcontractor) or any of its officers or directors or any litigation, investigations or proceedings under the Sarbanes-Oxley Act. In addition, each Contractor (and each Subcontractor) must notify the State of any material civil litigation, arbitration or proceeding which arises during the term of the Contract and extensions thereto, to which Contractor (or, to the extent Contractor is aware, any Subcontractor hereunder) is a party, and which involves: (i) disputes that might reasonably be expected to adversely affect the viability or financial stability of Contractor or any Subcontractor hereunder; or (ii) a claim or written allegation of fraud against Contractor or, to the extent Contractor is aware, any Subcontractor hereunder by a governmental or public entity arising out of their business dealings with governmental or public entities. Any such litigation, investigation, arbitration or other proceeding (collectively, "Proceeding") must be disclosed in a written statement to the Contract Administrator within 30 days of its occurrence. Details of settlements which are prevented from disclosure by the terms of the settlement may be annotated as such. Information provided to the State from Contractor's publicly filed documents referencing its material litigation will be deemed to satisfy the requirements of this Section.

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

- (i) the ability of Contractor (or a Subcontractor hereunder) to continue to perform this Contract in accordance with its terms and conditions, or
- (ii) whether Contractor (or a Subcontractor hereunder) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in such Proceeding, which conduct would constitute a breach of this Contract or a violation of Michigan law, regulations or public policy, then Contractor shall be required to provide the State all reasonable assurances requested by the State to demonstrate that:
  - (A) Contractor and/or its Subcontractors hereunder will be able to continue to perform this Contract and any Statements of Work in accordance with its terms and conditions, and
  - (B) Contractor and/or its Subcontractors hereunder have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in such Proceeding.

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

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



### 2.272 Governing Law

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

### 2.273 Compliance with Laws

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

### 2.274 Jurisdiction

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

### 2.280 Environmental Provision

#### 2.281 Environmental Provision

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

(a) The Contractor shall use, handle, store, dispose of, process, transport and transfer any material considered a Hazardous Material in accordance with all federal, State and local laws. The State shall provide a safe and suitable environment for performance of Contractor's Work. Prior to the commencement of Work, the State shall advise Contractor of the presence at the work site of any Hazardous Material to the extent that the State is aware of such Hazardous Material. If the Contractor encounters material reasonably believed to be a Hazardous Material and which may present a substantial danger, the Contractor shall immediately stop all affected Work, give written notice to the State of the conditions encountered, and take appropriate health and safety precautions.

(b) Upon receipt of a written notice, the State will investigate the conditions. If (a) the material is a Hazardous Material that may present a substantial danger, and (b) the Hazardous Material was not brought to the site by the Contractor, or does not result in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Materials, the State shall order a suspension of Work in writing. The State shall proceed to have the Hazardous Material removed or rendered harmless. In the alternative, the State shall terminate the affected Work for the State's convenience.

(c) Once the Hazardous Material has been removed or rendered harmless by the State, the affected Work shall be resumed as directed in writing by the State. Any determination by the Michigan Department of Community Health and/or the Michigan Department of Environmental Quality (whichever is applicable) that the Hazardous Material has either been removed or rendered harmless shall be binding upon the State and Contractor for the purposes of resuming the Work. If any such incident with Hazardous Material results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in **Section 2.076** for a time as mutually agreed by the parties.

(d) If the Hazardous Material was brought to the site by the Contractor, or results in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor shall bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material in accordance with Applicable Laws to the condition approved by applicable regulatory agency(ies).



If the Contractor fails to take appropriate action pursuant to Applicable Laws and consistent with the State requirements, then the State may take appropriate action.

## **2.290 General**

### **2.291 Amendments**

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

### **2.292 Assignment**

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

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

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

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

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

### **2.294 Headings**

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

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

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

### **2.296 Notices**

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



## State:

State of Michigan  
Purchasing Operations  
Attention: Melissa Castro, CPPB  
PO Box 30026  
530 West Allegan  
Lansing, Michigan 48909

## Contractor:

Citizens Management Inc  
Attn: Scott Gaffner  
PO Box 620  
Howell, MI 48844

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 1, Attachment B** 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**

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

**2.306 Prevailing Wage**

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

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

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

**2.307 Call Center Disclosure**

Contractor and/or all subcontractors involved in the performance of this Contract providing call or contact center services to the State must disclose the location of its call or contact center services to inbound callers. Failure to disclose this information shall be a material breach of this Contract.

**2.308 Future Bidding Preclusion**

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

**2.310 Reserved****2.320 Extended Purchasing****2.321 MiDEAL**

Public Act 431 of 1984 permits DMB to provide purchasing services to any city, village, county, township, school district, intermediate school district, non-profit hospital, institution of higher education, community, or junior college. A current listing of approved program members is available at: <http://www.michigan.gov/doingbusiness/0,1607,7-146-6586-16656--00.html>. Unless otherwise stated, it is the responsibility of the Contractor to ensure that the non-state agency is an authorized purchaser before extending the Contract pricing.

The Contractor will supply Contract Services and equipment at the established State of Michigan contract prices and terms to the extent applicable and where available. Inasmuch as these are non-state agencies, all invoices will be submitted to and payment remitted by the local unit of government on a direct and individual basis.

To the extent that authorized local units of government purchase quantities of Services and/or equipment under this Contract, the quantities of Services and/or equipment purchased will be included in determining the appropriate rate wherever tiered pricing based on quantity is provided.

**2.322 State Employee Purchases - Reserved****2.330 Federal Grant Requirements - Reserved**