

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

June 1, 2011

**CHANGE NOTICE NO. 7**  
**TO**  
**CONTRACT NO. 071B7200068**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF VENDOR <b>First Data Government Solutions</b> <b>11311 Cornell Park Drive, Suite 300</b> <b>Cincinnati, OH 45242</b>  <b>Jason.clark@firstdata.com</b>	TELEPHONE <b>Jason Clark</b> <b>(513) 489-9599 x184</b>
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-3215 <b>Steve Motz</b>
Contract Administrator: Mark Lawrence <b>Centralized Electronic Payment Authorization System - Statewide</b>	
CONTRACT PERIOD: From: <b>December 1, 2006</b> To: <b>June 30, 2011</b>	
TERMS <b>N/A</b>	SHIPMENT <b>N/A</b>
F.O.B. <b>N/A</b>	SHIPPED FROM <b>N/A</b>
MINIMUM DELIVERY REQUIREMENTS <b>N/A</b>	
MISCELLANEOUS INFORMATION:	

**NATURE OF CHANGE (S):**

Effective July 1, 2011, this Contract is **CANCELLED** for convenience per Section 2.212. This Contract is replaced by Contract #071B1300185.

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

**AUTHORITY/REASON:**

Per Agency and Vendor agreement and DMB/Purchasing Operations approval.

**TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$ 2,431,722.00**

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

July 28, 2010

**CHANGE NOTICE NO. 6**  
**TO**  
**CONTRACT NO. 071B7200068**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF VENDOR  <b>First Data Government Solutions</b> <b>11311 Cornell Park Drive, Suite 300</b> <b>Cincinnati, OH 45242</b>  <b>Jason.clark@firstdata.com</b>	TELEPHONE <b>(513) 489-9599 x184</b> <b>Jason Clark</b>
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-3215 <b>Steve Motz</b>
Contract Administrator: Mark Lawrence <b>Centralized Electronic Payment Authorization System - Statewide</b>	
CONTRACT PERIOD: From: <b>December 1, 2006</b> To: <b>November 30, 2011</b>	
TERMS <p style="text-align: center;"><b>N/A</b></p>	SHIPMENT <p style="text-align: center;"><b>N/A</b></p>
F.O.B. <p style="text-align: center;"><b>N/A</b></p>	SHIPPED FROM <p style="text-align: center;"><b>N/A</b></p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;"><b>N/A</b></p>	
MISCELLANEOUS INFORMATION:	

**NATURE OF CHANGE (S):**

Effective immediately this Contract is amended to included the attached MI CEPAS New Acquirer Statement of Work. The Statement of Work defines the tasks and requirements for FDGS to develop a computer program to modify the existing credit card acquirer configuration data to accommodate the change of the credit card acquirer from Elavon to Fifth Third Processing Solutions.

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

**AUTHORITY/REASON:**

Per Agency and Vendor agreement and DMB/Purchasing Operations approval.

**TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$ 2,431,722.00**

# **MI CEPAS**

New Acquirer

## **Statement of Work**

**Submitted by**

**First Data Government Solutions**

**To**

**MI CEPAS**

**Version 1.3**

**May 14, 2010**

### Revision History

<b>Revision Date</b>	<b>Version</b>	<b>Notes</b>
05/13/2010	1.0	Draft
5/20/2010	1.1	Amy Kelso's edits
5/28/2010	1.2	Amy and Jason's Edits
6/1/2010	1.3	Clean Draft

**STATEMENT OF WORK FOR  
Hardware, Software, and Professional Services**

This Statement of Work ("SOW"), effective as of the date last written below ("Effective Date"), is attached to, and made a part of, the Agreement dated December 1, 2006 (the "Agreement"), by and between First Data Government Solutions, Inc. ("FDGS") and the State of Michigan CEPAS ("Client"). All terms and conditions contained in the Agreement shall remain in full force and effect and shall apply to the extent applicable to this SOW, except as expressly modified herein. To the extent that the terms and conditions of this SOW are in conflict with the terms and conditions of this Agreement, or any other incorporated item, this SOW shall control relative to the Work Products and/or Services produced hereunder.

The terms of this SOW are limited to the scope of this SOW and shall not be applicable to any other SOWs, which may be executed between the parties.

This SOW consists of this signature page and the following sections that are incorporated in this SOW by this reference:

1. Project Description
2. Responsibilities of the Parties
3. Key Assumptions
4. Professional Services Requirements
5. Software Requirements & Specifications
6. Hardware Requirements & Specifications
7. Training
8. Documentation
9. Maintenance
10. Project Schedule
11. Deliverables
12. Pricing and Payment
13. Acceptance
14. Change Management
15. Key Contact Information
16. Miscellaneous

IN WITNESS WHEREOF, the duly authorized representatives of the parties hereto have caused this SOW to be duly executed.

**First Data Government Solutions, Inc.**

**Client  
by its duly authorized representative:**

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

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

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

## 1.0 Project Description

The purpose of this SOW is to modify the existing credit card processing acquirer data within the FDGS PayPoint configuration to reflect the Clients new credit card processing acquirer information; Fifth Third Processing Solutions (FTPS).

### Automated Process

FDGS to update processing acquirer data within the PayPoint configuration using an automated program or application developed by FDGS.

Steps include the following:

- o Design document
- o Develop & code application
- o QA application
- o Build spreadsheet with migration configuration items
- o Run automated settlement
- o Run Test transaction and reverse payment
- o Monitor transactions after configuration changes
- o Review logs
- o Monitor next day settlement

## 2.0 Responsibilities of the Parties

### Client:

- o Responsible for providing updated configuration data one (1) to two (2) weeks prior to each Application migration
- o Responsible for disabling all payment traffic prior to specified cutoff day/time.
- o Monitor applications while FDGS tests the updated merchant information
- o Enable payment traffic on designated application once FDGS confirms testing is complete/successful

### FDGS:

- o Provide project specifications
- o Provide detailed project plan
- o Provide updated documentation to reflect the new changes / functionality listed within the SOW
- o Provide functionality listed in this SOW

## 3.0 Key Assumptions

- o Implementation start date will be determined once the SOW is fully executed.
- o The Migration schedule will be determined once the SOW is fully executed
- o Approximately 339 applications to be converted to the new acquirer.
- o Approximately 15 agencies
- o Client will migrate agency-by-agency. All applications under an agency will be migrated during the same window; with the exception of the Department of State, which will be implemented over a three to four week time frame.
- o Client will be responsible for disabling front-end apps for migration.
  - o This includes Consumer Payments applications
- o Client is responsible for providing updated configuration data to FDGS
  
- o FDGS will perform Agency migrations will be done at a mutually agreeable time, which many may be during business hours.
- o FDGS will verify that data provided by Client has been updated in the configuration per application. Should an update fail due to data inconsistencies between FDGS's configuration and the data provided by the client, FDGS will provide the Client with a list of updates that were rejected. If the "test" payment fails FDGS will revert back to the old Vital information, otherwise the Client will not be able to accept payments for that application. It is up to Client and FTPS to determine/manage the priority for correcting

the rejects. Once the data has been updated and provided back to FDGS in the proper format FDGS will try to re-import the data using the automated process.

#### **4.0 Professional Services Requirements**

- Project management
- Development engineer
- Business analyst
- Quality assurance staff

#### **5.0 Software Requirements & Specifications**

- No new software requirements at this time

#### **6.0 Hardware Requirements & Specifications**

- No new hardware requirements at this time

#### **7.0 Training**

Not Applicable

#### **8.0 Documentation**

- Design Document
- Spreadsheet of old/new merchant information

#### **9.0 Maintenance**

- Not Applicable

#### **10.0 Project Schedule**

- A mutually agreeable project schedule to be defined upon completion of AccessNet project specification and based on FDGS resource availability. Client will be responsible for all correspondence, resource scheduling, and project management with FTPS.

#### **11.0 Deliverables**

- FDGS to provide project specifications
- FDGS to provide detailed project plan
- FDGS to provide updated documentation to reflect the new changes / functionality listed within the SOW
- FDGS to provide functionality listed in this SOW

#### **12.0 Pricing and Payment**

The pricing and payment terms listed below are good for 60 days from June 1, 2010

##### **Automated Process**

- Project management
- Development engineer
- Business analyst
- Quality assurance staff

##### **Payment terms for the system are as follows:**

- 100% of Professional Services to be invoiced upon successful migration of first agency. Total Cost **\$13,175.00**

FDGS to include the fee on the monthly invoice. FDGS to work with the State to determine fee split by agency if applicable.

- **Should client cancel this SOW for any reason (e.g. Lack of funding, etc.), client will pay FDGS for work performed up to date of cancellation. If Client delays the project more than 30 days beyond the agreed upon schedule they will pay FDGS for services performed to date and a new price will need to be negotiated for the remainder of the project.**

### **13.0 Acceptance**

Each deliverable is deemed accepted by the client should client begin using the system in production, or if the client does not notify FDGS of any nonconformance, in writing, within five business days after delivery.

### **14.0 Change Management**

- o Not Applicable

### **15.0 Key Contact Information**

#### **Amy Kelso**

CEPAS/Credit Card Program Manager  
Dept. of Treasury - Receipts Processing Division  
Phone (517) 636-5372  
Fax (517) 636-5401  
[kelsoa@michigan.gov](mailto:kelsoa@michigan.gov)

#### **Brandon Keith**

Project Manager  
First Data  
Phone (303) 967-5540  
Fax (303) 967.5867  
[Brandon.Keith@FirstData.com](mailto:Brandon.Keith@FirstData.com)

#### **Jason Clark**

Relationship Manager  
First Data  
Phone (513) 489-9599 ext 184  
Fax (513) 489-6521  
[Jason.Clark@FirstData.com](mailto:Jason.Clark@FirstData.com)

### **16.0 Miscellaneous**

Limitation of Liability: (a) In no event shall First Data have any liability or responsibility for any indirect, incidental, punitive, exemplary, special or consequential damages (including, but not limited to, damages arising from loss of profits or data), even if advised of the possibility of such damages; (b) To the maximum extent permitted by applicable law, First Data's liability for damages hereunder shall not exceed the amount of fees paid under this SOW.

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

March 12, 2010

**CHANGE NOTICE NO. 5**  
**TO**  
**CONTRACT NO. 071B7200068**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF VENDOR  <b>First Data Government Solutions</b> <b>11311 Cornell Park Drive, Suite 300</b> <b>Cincinnati, OH 45242</b>  <b>rhonda.wier@firstdata.com</b>	TELEPHONE <b>303-967-5483</b> <b>Rhonda Wier</b>
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-3215 <b>Steve Motz</b>
Contract Administrator: Mark Lawrence <b>Centralized Electronic Payment Authorization System - Statewide</b>	
CONTRACT PERIOD: From: <b>December 1, 2006</b> To: <b>November 30, 2011</b>	
TERMS <p style="text-align: center;"><b>N/A</b></p>	SHIPMENT <p style="text-align: center;"><b>N/A</b></p>
F.O.B. <p style="text-align: center;"><b>N/A</b></p>	SHIPPED FROM <p style="text-align: center;"><b>N/A</b></p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;"><b>N/A</b></p>	
MISCELLANEOUS INFORMATION:	

**NATURE OF CHANGE (S):**

Effective immediately the attachment provided in Change Notice #3 "MI CEPAS PayPoint Help Desk Interaction and Escalation Process" is replaced with the updated document attached. Additionally First Data has agreed to not assess an upcharge for any applications using Consumer Payments that would have otherwise utilized Page Pop.

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

**AUTHORITY/REASON:**

Per Agency and Vendor agreement and DMB/Purchasing Operations approval.

**TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$ 2,431,722.00**

# MI CEPAS

## PayPoint Support Interaction and Escalation Process

*Customer Service  
Commitment*

*First Data is committed to continually improving our service by listening to our customers and responding to their needs timely and efficiently.*

**Customer Support # - 877-869-0860**  
**[PaySupport@FirstData.com](mailto:PaySupport@FirstData.com)**

***Dedicated Staff***

*First Data is dedicated to supporting our clients with the best service available. Customer service representatives are available to assist during normal business hours and beyond. The staff is a group of dedicated personnel performing support for our customers. In the event we need help outside of the PayPoint Support staff, we have access to all company resources as needed.*

*The following section describes the First Data Team approach to product support. This section discusses our general approach to service.*

***Support Services Approach***

The First Data PayPoint Support Team is committed to being our customers' most valued business partner by ensuring successful implementation and use of First Data products and services.

The PayPoint Support Team office hours are 8:00AM – 7:00PM ET and staff can be reached by phone at 877.869.0860 or by emailing us at PaySupport@FirstData.com. After hours we can be reached at 877.869.0860 option 1. Your call will be routed to our answering service and they will contact the on-call technician. All issues reported through the First Data Help Desk are logged into our Support Database, creating a call ticket. Each call ticket is assigned to a contact within your agency and assigned to a support member of our staff.

**Staff:**

First Data has assigned Ronda Earnhart as your primary PayPoint Support contact.. Ronda will be your primary point of contact when possible and will coordinate any incidents that are being worked by other technicians.



**Senior Problem Analyst Ronda Earnhart. 303.967.5438 and Ronda.Earnhart@FirstData.com.**

In the event Ronda is not available, we have assigned your second point of contact as: **PayPoint Support Manager Paul Hoglund. 303.967.5833 and Paul.Hoglund@FirstData.com.**

When Ronda and Paul are not available we request you contact our Help Desk at: 877.869.0860 or by emailing us at PaySupport@FirstData.com.

**Note: Any emails sent directly to Ronda or Paul must include a Cc: to PaySupport@FirstData.com. In addition, all Severity 1 issues should be reported by phone in addition to email to ensure immediate attention.**

### **Process:**

- All service requests will receive a response within 1 hour and will be worked according to severity.
- Our support technician is responsible for escalating the call according to our Production Escalation Matrix as described below.
  - Upon evaluating the incident, if there is a clear resolution path that falls outside of the escalation matrix timeframe, the technician may determine no escalation is necessary. Support technician will notify the merchant of expected timeframe for resolution and no escalation will take place.
- Our PayPoint Support team and Management is responsible for tracking the issue to its resolution and contacting the client at each level of escalation to provide updates on the action being taken to resolve the issue. This team will work collaboratively with the client to determine the Severity of a problem if there is a disagreement on the severity assignment. This team is also responsible for engaging resources as needed to efficiently resolve problems in a timely fashion.
- The Account and Relationship management team has a dotted-line relationship to the Support Team and will be made aware of any escalations.
- Once an issue is escalated and the First Data Management team and the client reach an agreement on next steps, the escalation process can be put on hold and not escalated to the next level unless either party requests the process be put back into motion. Note: This would be common on items that are put into a schedule for future enhancements or have planned/scheduled maintenance windows, etc.

Calls are classified into four Severity groups:

### **Severity 1:**

- Any problem having MAJOR or GLOBAL impact, resulting in a LOSS of vital services or resources (i.e., any issue affecting greater than 50 percent of the application or solution, NACHA bank file transfers, or Payment Processing, (Unable to make payments :Web, Consumer Payments or Admin. Make Payment function is unavailable))
- Any problem causing an outage to the customer's critical path primary processing services or capabilities and, an acceptable secondary processing capability is not immediately available.
- Daily Posting file missing.

**Severity 2:**

- Any problem causing an outage for the customer's primary processing services or capabilities; however an acceptable workaround or secondary processing capability has been implemented.
- Any problem causing the system or application to function at a limited capacity. (i.e., any issue affecting less than 50 percent of the application or solution).
- Administrative site not available for general use.
- Mode changes (e.g. move from cert. to production).

**Severity 3:**

- A problem that degrades or compromises the usability or access to a non-critical application, system or function.
- Reporting issues.
- Unexplained payment error messages.
- UAT issues regarding processor site down.
- Manage User set-up issues.
- Application configuration issues.
- Integration Issues.
- Duplicate payment research.
- PayPoint UAT site is down.

**Severity 4:**

- Problems that have low or no impact to internal or external customers.
- Client questions to the Account Management Team requesting information about adding additional functionality to a current application, requesting custom application documents (DSD's), etc. Severity 4 tickets serve the function of allowing us to track client to project team communication that comes through the help desk.
- General inquires/communication.
- Boarding new applications. (E-check transactions have 10 business days per contract).

**Production Escalation Process** – Once an issue has been received and a Severity level assigned, the Support technician will own the issue up to the maximum times defined below before moving to the next escalation level. Any team member can escalate to the next level prior to the maximum time expiring if the situation requires additional resources. All levels of the escalation management team can reach out to the PayPoint product support, Telecheck, Vital, and CTO-Hosting as needed at any time in this process. (Note: Ownership of ticket will remain with PayPoint Support Team and it is the responsibility of PayPoint support team to engage other groups and/or escalate as needed).

**Production Escalation Chart**

The Escalation chart outlines how Office Hours impact escalation times.



**Production Escalation Chart**

**During FD Office Hours (8:00 am – 7:00 pm EST, M- F)**

<b>Contact Person</b>	<b>Severity 1 Critical (System Down)</b>	<b>Severity 2 Loss of Functionality</b>	<b>Severity 3 General Inquiry or Question</b>	<b>Severity 4 Client questions to Account Management or general inquiries. Other non impacting items</b>
Ronda Earnhart or PayPoint Support Technician on Duty	2 Hours*	2 Hours*	<b>24 Hours</b>	72 Hours
PayPoint Support Manager	2 Hours	4 Hours	48 Hours	336 Hours (10 business Days)
PayPoint Director / Relationship Manager	2 Hours	4 Hours	48 Hours	***** If no resolution is reached after two weeks the PayPoint Director, Director Account Management, and Relationship Manager meet to devise an appropriate action plan for the Final Resolution of the case. *****
VP, Payment Solutions	Final Resolution	Final Resolution	Final Resolution	

**\* All Severity 1 issues require the Technician on Duty to immediately inform the Account Manager and Help Desk manager of the situation.**

**After Hours, Weekends, and Holidays**

<b>Contact Person</b>	<b>Severity 1 Critical (System Down)</b>	<b>Severity 2 Loss of Functionality</b>	<b>Severity 3 General Inquiry or Question</b>	<b>Severity 4 Client questions to Account Management or general inquiries. Other non impacting items</b>
PayPoint Support Technician on Duty	2 Hours	2 Hours	<b>Next Business Day -  Researched and, if required, escalated according to Production Escalation</b>	<b>Next Business Day -</b> Researched and, if required, escalated according to Production Escalation Chart (During FIRST DATA Office Hours)

			Chart (During FD Office Hours)	
Escalate in this order:  PayPoint Support Manager  PayPoint Director / Relationship Manager  VP, Payment Solutions	PayPoint Manager or designee will Contact the Client to Discuss Resolution and Timing	PayPoint Manager or designee will Contact the Client to Discuss Resolution and Timing		***** If no resolution is reached after two weeks the PayPoint Director, Director Account Management, and Relationship Manager meet to devise an appropriate action plan for the Final Resolution of the case. *****

**Incident Review:**

First Data will distribute a weekly PayPoint Support incident report for your review. The report will include the open and closed incidents for the period and will provide you current status on Support incidents. The PayPoint Support staff will also participate in the regularly scheduled Monthly relationship meeting. An incident review will be conducted that focuses on the open incidents and outstanding concerns or follow-up on closed incidents.

**Formal Incident Reports:**

First Data understands that the State of Michigan may request a formal Incident Report for global and major business impacting service events. First Data will review the requests for formal Incident Reports with you in our joint regularly scheduled Monthly meetings. First Data will have 10 business days to complete the formal Incident Report form with all available data for the Incident Information and Incident Resolution portions of the Report. In the event there is any outstanding investigation or follow-up information that is not available prior to completion of the formal Incident report, First Data will provide information around the pending item along with an estimated completion time for the close out of the pending items in the Incident Report.

The First Data Director of eService Account Management will be the owner of the formal Incident Report response process.

**Contacts:**

**Ronda Earnhart**, Senior Problem Analyst and Primary PayPoint Support contact.  
 303.967.5438 direct  
 303.799.3621 fax  
[Ronda.Earnhart@FirstData.com](mailto:Ronda.Earnhart@FirstData.com)

**Paul Hoglund**, PayPoint Support Manager and Secondary contact

303.967.5833 direct  
303.799.3621 fax  
303.478.6111 mobile  
[Paul.Hoglund@firstdata.com](mailto:Paul.Hoglund@firstdata.com)

**PayPoint Support**  
877.869.0860  
[PaySupport@FirstData.com](mailto:PaySupport@FirstData.com).

**Kristen Olson**, Director PayPoint  
303.967.5570 direct  
303.967.5599 fax  
303.949.3552 mobile  
[kristen.olson@FirstData.com](mailto:kristen.olson@FirstData.com)

**Chris Stevens**, Relationship Manager  
513.489.9599 x152 direct  
513.489.6521 fax  
513.484.5854 mobile  
[chris.stevens@firstdata.com](mailto:chris.stevens@firstdata.com)

**Gerhard Milkuhn**, Director eService Account Management  
513.489.9599 x155 direct  
513.489.6521 fax  
513.379.3675 mobile  
[Gerhard.Milkuhn@firstdata.com](mailto:Gerhard.Milkuhn@firstdata.com)

**Chuck Eliassen**, VP Payment Solutions  
513.489.9599 x151 direct  
513.489.6521 fax  
[Chuck.Eliassen@firstdata.com](mailto:Chuck.Eliassen@firstdata.com)

If at any time, the Department is not satisfied with the level of service they are provided, they can contact the PayPoint Director:

Kristen Olson  
12500 E Belford Ave  
Englewood, CO 80112  
303-967-5570  
[kristen.olson@firstdata.com](mailto:kristen.olson@firstdata.com)



## **Clarification on Charges for Consumer Payments**

First Data/PayPoint will no longer be supporting Page Pop as of April 25, 2010. Due to the contractual verbiage within the State of Michigan contract (see verbiage below) First Data/PayPoint will not assess an upcharge for any applications using Consumer Payments, that would have otherwise utilized Page Pop. This would be indicated when there is no billing data uploaded, no challenge data used, no additional custom data collected on the site, registrations and recurring payments are not enabled and the consumer payments site is used strictly to collect the payment information.

MI contract verbiage:

D8. Application Program Interface (API): The Contractor must provide APIs to facilitate its payment processing functionality. The Contractor must provide a variety of methods for accessing their services. The APIs shall include but not be limited to:

- a.) Web Services utilizing Extensible Markup Language ( XML), Simple Object Access Protocol (a.k.a. SOAP), Web Services Description Language ( WSDL)
- b.) Secure HTTP
- c.) A web page that may be invoked by a State application that is used solely for making an electronic payment. The page must allow the State application to specify the appearance of some of its attributes including but not limited to the title of the page, page header, page footer, and confirmation text when a successful payment is made.
- d.) A batch interface for transfer of multiple transactions from a State application to the Contractor in a secure manner.
- e.) The Contractor must develop the mapping and interface from the current API structure to the Contractor's API structure.

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

November 20, 2009

**CHANGE NOTICE NO. 4  
 TO  
 CONTRACT NO. 071B7200068  
 between  
 THE STATE OF MICHIGAN  
 and**

NAME & ADDRESS OF VENDOR  <b>First Data Government Solutions          11311 Cornell Park Drive, Suite 300          Cincinnati, OH 45242</b>  rhonda.wier@firstdata.com	TELEPHONE <b>303-967-5483</b> <b>Rhonda Wier</b>
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-3215 <b>Steve Motz</b>
Contract Administrator: Mark Lawrence <b>Centralized Electronic Payment Authorization System - Statewide</b>	
CONTRACT PERIOD: From: <b>December 1, 2006</b> To: <b>November 30, 2011</b>	
TERMS <p align="center">N/A</p>	SHIPMENT <p align="center">N/A</p>
F.O.B. <p align="center">N/A</p>	SHIPPED FROM <p align="center">N/A</p>
MINIMUM DELIVERY REQUIREMENTS <p align="center">N/A</p>	
MISCELLANEOUS INFORMATION:	

**NATURE OF CHANGE (S):**

**Effective immediately both optional extensions are exercised and this contract is EXTENDED through November 30, 2011. In exchange for exercising both option years, the Contract is provided a rate reduction which is identified in the attached renewal proposal, which is in response to EO 2009-03.**

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

**AUTHORITY/REASON:**

**Per Agency/Vendor agreement, and Administrative Board approval on November 17, 2009.**

**TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$ 2,431,722.00**



# Renewal Proposal

The State of Michigan  
September 11, 2009 (updated November 3, 2009)

**Presented to:**

Steve Motz  
The State of Michigan/ CEPAS

**Presented by:**

Rhonda Wier  
Relationship Executive  
First Data  
[rhonda.wier@firstdata.com](mailto:rhonda.wier@firstdata.com)





# Proposed Renewal Terms and Conditions

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## Included Services

First Data proposes the renewal of all services within the current Processing Agreement which encompasses the PayPoint product.

## Form of Agreement

First Data proposes an amendment to the Processing Agreement which reflects the agreed upon renewal terms and conditions.

## Renewal Term

First Data is proposing a 2 year term renewal extension effective upon the conclusion of the current Processing Agreement and continuing through November 30, 2011.

## Renewal Pricing Proposal

In consideration of The State of Michigan's renewal extension, and contingent upon acceptance of this offer First Data proposes the following:

- **Pricing Revision:** Effective 12/1/2009, an overall 10% price reduction in transaction costs. Monthly Tier Volume Pricing as follow

Monthly Transaction Volume	Per Transaction Cost
0-100,000	.17
100,001-250,000	.15
250,001-350,000	.14
350,001-450,000	.13
450,001+	.12



- **Termination for Convenience Clause** – 2.212 is replaced with the following:

### **2.212 Termination for Convenience**

The State may terminate this Contract for convenience, in whole or in 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 including, 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 in a response in 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 ninety (90) days prior to the date of termination and paying the Contractor an amount equal to the average monthly fees paid to Contractor under this Contract during the six (6) months prior to the notification date multiplied by seventy-five percent (75%) and then multiplied by the number of months remaining under the term of this Contract after the effective date of such early termination, not to exceed \$150,000 (the "Early Termination Fee"). The Early Termination Fee will be due and payable in a single lump sum on the effective date of the early termination. The State and Contractor agree that the Early Termination Fee is: (a) based on economic assumptions that are material to each party as of the Effective Date, including the revised pricing provided by Contractor to the State; (b) intended to compensate Contractor for the losses that the parties agree that Contractor will incur as a result of the termination of this Contract before the completion of the term; and (c) a reasonable estimate, as of the Effective Date, of the actual damages that Contractor would incur as a result of the termination of this Contract before the completion of the term and does not constitute a penalty. If the State chooses to terminate this Contract in part, the charges payable under this Contract, including the Early Termination Fee, shall be equitably adjusted to reflect those Services / Deliverables that are terminated. Services and related provision of this Contract that are terminated for cause shall cease on the effective date of the termination. Nothing in this Section 2.212 will limit Contractor's right to recover from the State any amounts for which the State is otherwise liable under this Contract.

- **All Other Existing Terms and Conditions** – In the present contract remain in tact for the new agreement.





November 3, 2009

Mr. Mark Lawrence  
Office of Employee & Financial Services  
MDIT Contracts  
525 W. Allegan  
Lansing, MI 48913

**RE: Contract 071B7200068  
Exercising 2-Year Option to Renew**

Dear Mr. Lawrence:

This letter is to notify you that First Data Government Solutions agrees to exercise a 2-year option to renew Contract 071B7200068 (the "Contract"). In addition, we agree that Section 2.212 of the Contract should be replaced in its entirety by the Section 2.212 on Page 1 of Attachment A. Except for this change, we agree to renew the Contract upon the same terms and conditions. The renewal period is from 12/1/2009 to 11/30/2011.

We would also like to take this opportunity to update our contact information on the contract. Please change the contact email address to [rhonda.wier@firstdata.com](mailto:rhonda.wier@firstdata.com) and change the telephone number to (303) 967-5483, Rhonda Wier. Our address has not changed.

If you have any questions, please feel free to contact Rhonda Wier at the phone number or email address above.

Sincerely,  
FIRST DATA GOVERNMENT SOLUTIONS, INC.



Chuck Eliassen  
Vice President

cc: Rhonda Wier



## 2.212 Termination for Convenience

The State may terminate this Contract for convenience, in whole or in 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 in a response in 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 ninety (90) days prior to the date of termination and paying the Contractor an amount equal to the average monthly fees paid to Contractor under this Contract during the six (6) months prior to the notification date multiplied by seventy-five percent (75%) and then multiplied by the number of months remaining under the term of this Contract after the effective date of such early termination, not to exceed \$150,000 (the "Early Termination Fee"). The Early Termination Fee will be due and payable in a single lump sum on the effective date of the early termination. The State and Contractor agree that the Early Termination Fee is: (a) based on economic assumptions that are material to each party as of the Effective Date, including the revised pricing provided by Contractor to the State; (b) intended to compensate Contractor for the losses that the parties agree that Contractor will incur as a result of the termination of this Contract before the completion of the term; and (c) a reasonable estimate, as of the Effective Date, of the actual damages that Contractor would incur as a result of the termination of this Contract before the completion of the term and does not constitute a penalty. If the State chooses to terminate this Contract in part, the charges payable under this Contract, including the Early Termination Fee, shall be equitably adjusted to reflect those Services / Deliverables that are terminated. Services and related provision of this Contract that are terminated for cause shall cease on the effective date of the termination. Nothing in this Section 2.212 will limit Contractor's right to recover from the State any amounts for which the State is otherwise liable under this Contract.



CONTRACT #071B7200068

Form No. DMB 234 (Rev. 1/96)  
AUTHORITY: Act 431 of 1984  
COMPLETION: Required  
PENALTY: Contract will not be executed unless form is filed

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

October 30, 2008

CHANGE NOTICE NO. 3  
TO  
CONTRACT NO. 071B7200068  
between  
THE STATE OF MICHIGAN  
and

NAME & ADDRESS OF VENDOR  <b>First Data Government Solutions</b> <b>11311 Cornell Park Drive, Suite 300</b> <b>Cincinnati, OH 45242</b>  <b>rhonda.wier@firstdata.com</b>	TELEPHONE <b>303-967-5483</b> <b>Rhonda Wier</b>
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-3215 <b>Steve Motz</b>
Contract Administrator: Mark Lawrence <b>Centralized Electronic Payment Authorization System - Statewide</b>	
CONTRACT PERIOD: From: <b>December 1, 2006</b> To: <b>November 30, 2009</b>	
TERMS <b>N/A</b>	SHIPMENT <b>N/A</b>
F.O.B. <b>N/A</b>	SHIPPED FROM <b>N/A</b>
MINIMUM DELIVERY REQUIREMENTS <b>N/A</b>	
MISCELLANEOUS INFORMATION:	

**NATURE OF CHANGE (S):**

Effective immediately the Contractor contact information provided in CN#2 Compensating Balance Statement of Work has been updated and the following attachment labeled MI CEPAS PayPoint Help Desk Interaction and Escalation Process is incorporated into this contract.

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

**AUTHORITY/REASON:**

Per Agency and Vendor agreement and DMB/Purchasing Operations approval.

**TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$ 2,431,722.00**



Please note the following change made to the Key Contact Information provided in the Compensating Balance Statement of Work in Change Notice #2

15.0 Key Contact Information

Tom Sharpe  
State of Michigan  
Department of Treasury, Receipts Processing Division  
517-636-5379  
[SharpeT@michigan.gov](mailto:SharpeT@michigan.gov)

~~Rhonda Wier~~  
~~First Data Corporation/ PayPoint~~  
~~303-967-5483~~  
~~[rhonda.wier@firstdata.com](mailto:rhonda.wier@firstdata.com)~~

- ~~Deleted: Kristen Olson~~
- ~~Deleted: Government Solutions~~
- ~~Deleted: 792-5500 x139~~
- ~~Deleted: [kolson@fdgs.com](mailto:kolson@fdgs.com)~~

MI CEPAS  
PayPoint Help Desk  
Interaction and  
Escalation Process

*Customer Service  
Commitment*

*First Data is committed to  
continually improving our service  
by listening to our customers and  
responding to their needs timely and  
efficiently.*

**Customer Support # - 800.699.2530**  
**[paysupport@fdgs.com](mailto:paysupport@fdgs.com)**

***Dedicated Staff***

*First Data is dedicated to supporting our clients with the best service available.*

*Customer service representatives are available to assist during normal business hours and beyond. The staff is a group of dedicated personnel performing support for our customers. In the event we need help outside of the Help Desk staff, we have access to all company resources as needed.*

*The following section describes the First Data Team approach to product support. This section discusses our general approach to service.*

***Support Services Approach***

The First Data PayPoint Help Desk is committed to being our customers' most valued business partner by ensuring successful implementation and use of First Data products and services.

The Help Desk's in office hours are 8:00AM – 7:00PM ET and staff can be reached by phone at 800.699.2530 or by emailing us at [paysupport@fdgs.com](mailto:paysupport@fdgs.com). After hours we can be reached at

800.699.2530 option 1. Your call will be routed to our answering service and they will contact the on-call technician. All issues reported through the First Data Help Desk are logged into our Support Database, creating a call ticket. Each call ticket is assigned to a contact within your agency and assigned to a support member of our staff.

**Staff:**

First Data has assigned Ronda Earnhart as your primary point of contact at the Help Desk. Ronda will be your primary point of contact when possible and will coordinate any incidents that are being worked by other technicians.

**Senior Problem Analyst Ronda Earnhart. 303.967.5438 and ronda.earnhart@fdgs.com.**

In the event Ronda is not available, we have assigned your second point of contact as: **Help Desk Manager Paul Hoglund. 303.967.5833 and phoglund@fdgs.com.**

When Ronda and Paul are not available we request you contact our Help Desk at: 800.699.2530 or by emailing us at [paysupport@fdgs.com](mailto:paysupport@fdgs.com).

**Note: Any emails sent directly to Ronda or Paul must include a Cc: to [paysupport@fdgs.com](mailto:paysupport@fdgs.com). In addition, all Severity 1 issues should be reported by phone in addition to email to ensure immediate attention.**

**Process:**

- All service requests will receive a response within 1 hour and will be worked according to severity.
- Our support technician is responsible for escalating the call according to our Production Escalation Matrix as described below.
- Our Help Desk and Account Managers are responsible for tracking the issue to its resolution and contacting the client at each level of escalation to provide updates on the action being taken to resolve the issue. This team will work collaboratively with the client to determine the Severity of a problem if there is a disagreement on the severity assignment. This team is also responsible for engaging resources as needed to efficiently resolve problems in a timely fashion.
- Once an issue is escalated and the First Data Management team and the client reach an agreement on next steps, the escalation process can be put on hold and not escalated to the next level unless either party requests the process be put back into motion. Note: This would be common on items that are put into a schedule for future enhancements, etc.

Calls are classified into four Severity groups:

**Severity 1:**

- Any problem having MAJOR or GLOBAL impact, resulting in a LOSS of vital services or resources (i.e., any issue affecting greater than 50 percent of the application or solution, NACHA bank file transfers, or Payment Processing, (Unable to make payments :Web, Consumer Payments or Admin. Make Payment function is unavailable))
- Any problem causing an outage to the customer's critical path primary processing services or capabilities and, an acceptable secondary processing capability is not immediately available.
- Daily Posting file missing.

**Severity 2:**

- Any problem causing an outage for the customer's primary processing services or capabilities; however an acceptable workaround or secondary processing capability has been implemented.
- Any problem causing the system or application to function at a limited capacity. (i.e., any issue affecting less than 50 percent of the application or solution).
- Administrative site not available for general use.
- Mode changes (e.g. move from cert. to production).

**Severity 3:**

- A problem that degrades or compromises the usability or access to a non-critical application, system or function.
- Reporting issues.
- Unexplained payment error messages.
- UAT issues regarding processor site down.
- Manage User set-up issues.
- Application configuration issues.
- Integration Issues.
- Duplicate payment research.
- PayPoint UAT site is down.

**Severity 4:**

- Problems that have low or no impact to internal or external customers.
- Client questions to the Account Management Team requesting information about adding additional functionality to a current application, requesting custom application documents (DSD's), etc. Severity 4 tickets serve the function of allowing us to track client to project team communication that comes through the help desk.
- General inquires/communication.
- Boarding new applications. (E-check transactions have 10 business days per contract).

**Production Escalation Process** – Once an issue has been received and a Severity level assigned the Help Desk technician, Account Manager, or the Help Desk management team will own the issue up to the maximum times defined below before moving to the next escalation level. Any team member can escalate to the next level prior to the maximum time expiring if the situation requires additional resources. All levels of the escalation management team can reach out to the PayPoint product support, Telecheck, Vital, and CTO-Hosting as needed at any time in this process.

**Production Escalation Chart**

The Escalation chart outlines how Office Hours impact escalation times.

<b><u>Production Escalation Chart</u></b>				
<b>During FD Office Hours (8:00 am – 7:00 pm EST, M- F)</b>				
<b>Contact Person</b>	<b>Severity 1 Critical (System Down)</b>	<b>Severity 2 Loss of Functionality</b>	<b>Severity 3 General Inquiry or Question</b>	<b>Severity 4 Client questions to Account Management or general inquiries. Other non impacting items</b>
Ronda Earnhart or Client Services Tech on Duty	2 Hours*	2 Hours*	<b>24 Hours</b>	72 Hours
Help Desk PayPoint Manager	2 Hours	4 Hours	48 Hours	336 Hours (10 business Days)
Account Manager	2 Hours	4 Hours	48 Hours	***** If no resolution is reached after two weeks the Help Desk and Account Manager meets to devise an appropriate action plan for the Final Resolution of the case. *****
Help Desk Director	2 Hours	4 Hours	48 Hours	
VP Delivery Innovative Payments Group	Final Resolution	Final Resolution	Final Resolution	
<b>* All Severity 1 issues require the Technician on Duty to immediately inform the Account Manager and Help Desk manager of the situation.</b>				

**After Hours, Weekends, and Holidays**

Contact Person	<b>Severity 1 Critical (System Down)</b>	<b>Severity 2 Loss of Functionality</b>	<b>Severity 3 General Inquiry or Question</b>	<b>Severity 4 Client questions to Account Management or general inquiries. Other non impacting items</b>
Client Services Technician on Duty	2 Hours	2 Hours	<b>Next Business Day</b>  <b>Researched and, if required, escalated according Production Escalation Chart (During FD Office Hours)</b>	<b>Next Business Day -</b> Researched and, if required, escalated according Production Escalation Chart (During FDGS Office Hours)
Escalate in this order:  Help Desk PayPoint Manager  Account Manager  Help Desk Director  VP Delivery Innovative Payments Group	PayPoint Manager or designee will Contact the Client to Discuss Resolution and Timing	PayPoint Manager or designee will Contact the Client to Discuss Resolution and Timing		<p align="center">*****</p> If no resolution is reached after two weeks the Help Desk and Account Manager meets to devise an appropriate action plan for the Final Resolution of the case. <p align="center">*****</p>

**Incident Review:**

First Data will distribute a weekly Help Desk incident report for your review. The report will include the open and closed incidents for the period and will provide you current status on Help Desk incidents. The Help Desk staff will also participate in the regularly scheduled bi-weekly relationship meeting. An incident review will be conducted that focuses on the open incidents and outstanding concerns or follow-up on closed incidents.

## **Formal Incident Reports:**

First Data understands that the State of Michigan may request a formal Incident Report

for global and major business impacting service events. First Data will review the requests for formal Incident Reports with you in our joint regularly scheduled bi-weekly meetings. First Data will have 10 business days to complete the formal Incident Report form with all available data for the Incident Information and Incident Resolution portions of the Report. In the event there is any outstanding investigation or follow-up information that is not available prior to completion of the formal Incident report, First Data will provide information around the pending item along with an estimated completion time for the close out of the pending items in the Incident Report.

The First Data Help Desk Director will be the owner of the formal Incident Report response process.

### **Contacts:**

**Ronda Earnhart**, Senior Problem Analyst and Primary Help Desk contact.

303.967.5438 direct

303.799.3621 fax

[ronda.earnhart@fdgs.com](mailto:ronda.earnhart@fdgs.com)

**Paul Hoglund**, Help Desk Manager and Secondary Help Desk contact

303.967.5833 direct

303.799.3621 fax

303.478.6111 mobile

[PHoglund@FDGS.com](mailto:PHoglund@FDGS.com)

### **Help Desk**

800.699.2530

[paysupport@fdgs.com](mailto:paysupport@fdgs.com).

**Rhonda Wier**, Director Account Management/PayPoint

303.967.5483 direct

303.325.6494 mobile

[Rhonda.Wier@firstdata.com](mailto:Rhonda.Wier@firstdata.com)

**Kristen Olsen**, Director PayPoint Delivery

303.967.5570 direct  
303.967.5599 fax  
303.949.3552 mobile  
[kolson@fdgs.com](mailto:kolson@fdgs.com)

**Gerhard Milkuhn**, Help Desk Director

513.489.9599 ext 155 direct  
513.489.6521 fax  
513.379.3675 mobil  
[gmilkuhn@fdgs.com](mailto:gmilkuhn@fdgs.com)

**Chuck Eliassen**, VP Delivery Innovative Payments Group

513.489.9599 ext 151 direct  
513.489.6521 fax  
[celiasen@fdgs.com](mailto:celiasen@fdgs.com)

If at any time, the Department is not satisfied with the level of service they are provided, they can contact the Help Desk Director:

Mr. Gerhard Milkuhn  
11311 Cornell Park Drive, Suite 300  
Cincinnati, OH 45242  
513.489.9599 ext. 155

**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 10, 2008

**CHANGE NOTICE NO. 2  
 TO  
 CONTRACT NO. 071B7200068  
 between  
 THE STATE OF MICHIGAN  
 and**

NAME & ADDRESS OF VENDOR		TELEPHONE
<b>First Data Government Solutions          11311 Cornell Park Drive, Suite 300          Cincinnati, OH 45242</b>  <b>kolson@fdgs.com</b>		<b>303-792-5500 x139          Kristen Olson</b>
		VENDOR NUMBER/MAIL CODE
		BUYER/CA (517) 241-3215 <b>Steve Motz</b>
Contract Administrator: Mark Lawrence <b>Centralized Electronic Payment Authorization System - Statewide</b>		
CONTRACT PERIOD: From: <b>December 1, 2006</b>		To: <b>November 30, 2009</b>
TERMS	N/A	SHIPMENT
		N/A
F.O.B.	N/A	SHIPPED FROM
		N/A
MINIMUM DELIVERY REQUIREMENTS		
N/A		
MISCELLANEOUS INFORMATION:		

**NATURE OF CHANGE (S):**

Effective immediately, this contract is hereby amended to include the following changes:

- CN2.A Change in Article 1, Section 1.302
- CN2.B Change in the Key Contact Information of Change Notice #1
- CN2.C Change in Article 1, Section 1.104.D.D6.C
- CN2.D Addition of FDGS Compensating Balance Statement of Work
- CN2.E Change in Key Personnel

A detailed description of these changes has been provided in the attached documents. All other terms, conditions, pricing and specifications remain unchanged.

**AUTHORITY/REASON:**

Per Agency and Vendor agreement and DMB/Purchasing Operations approval.

**TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$ 2,431,722.00**

CN2. **A Change in Article 1, Section 1.302**

Item #8 of Article 1, Section 1.302 is hereby replaced by the following:

8. **SAS 70 and PCI Reports:** The Contractor will supply annual SAS 70 audits and quarterly PCI reports to the Project Manager or designee. See Section 1.104.

CN2. **B Change in the Key Contact Information of Change Notice #1**

The Contact information provided for Change Notice #1, FDGS Consumer Payments Statement of Work, Section 15.0 - Key Contact Information is modified as follows:

~~Eileen Bur~~  
Tom Sharpe  
State of Michigan  
Department of Treasury, Receipts Processing Division  
~~517-636-5377~~  
517-636-5379  
[BurE@michigan.gov](mailto:BurE@michigan.gov)  
[SharpeT@michigan.gov](mailto:SharpeT@michigan.gov)

CN2. **C Change in Article 1, Section 1.104.D.D6.C**

Section 1.104.D.D6.C of Disaster Recovery / Back Up Site is replaced with the following:

- c.) When material changes in site locations are done to perform maintenance or upgrades on the Primary site, the contractor shall inform the Project Manager what changes/upgrades are occurring.

# **First Data Government Solutions Compensating Balance**

## **Statement of Work**

**Submitted to**

**STATE OF MICHIGAN**

**Centralized Electronic Payment and Authorization System (CEPAS)  
Version 1.0**

**July 7, 2008**

**STATEMENT OF WORK FOR  
Hardware, Software, and Professional Services**

**Project:** Centralized Electronic Payment and Authorization System (CEPAS) – Consumer Payments

This Statement of Work (SOW) is made and entered into between First Data Government Solutions, Inc. (Consultant) and State of Michigan (Client) as of the date last written below (Effective Date). This SOW is attached to, and made a part of, Contract Number 071B7200068 (Agreement). All terms and conditions contained in the Agreement shall remain in full force and effect and shall apply to the extent applicable to this SOW except as expressly modified herein. To the extent that the terms and conditions of this SOW are in conflict with the terms and conditions of this Agreement, or any other incorporated item, this SOW shall control relative to the Work Products and/or Services produced hereunder.

The terms of this SOW are limited to the scope of this SOW and shall not be applicable to any other SOWs, which may be executed between the parties.

This SOW consists of this signature page and the following sections that are incorporated in this SOW by this reference:

1. Project Description
2. Responsibilities of the Parties
3. Key Assumptions
4. Professional Services Requirements
5. Software Requirements & Specifications
6. Hardware Requirements & Specifications
7. Training
8. Documentation
9. Maintenance
10. Project Schedule
11. Deliverables
12. Pricing and Payment
13. Acceptance
14. Change Management
15. Key Contact Information

IN WITNESS WHEREOF, the duly authorized representatives of the parties hereto have caused this SOW to be duly executed.

First Data Government Solutions, Inc.

State of Michigan

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

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

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

## **1.0 Project Description**

The State of Michigan has requested that the Consultant modify its billing process to facilitate payment from multiple sources. The Client will begin reimbursing the Consultant for certain agencies' transactions through a Compensating Balances payment process established with various financial institutions. The Consultant will receive payment directly from the financial institution for agencies identified by the Client. The current invoice will be modified to clearly identify charges associated with agencies the Client has assigned to the Compensating Balances payment process. Once the Client has approved the invoice, the Consultant will break it down into separate invoices for each financial institution. See Section 13.0 for timeline.

Additional financial institutions may be added as they are identified and approved by the Client. The Client will provide Consultant with advance notice when adding additional financial institutions to allow time for payment arrangements to be established between the Consultant and the financial institution. Client must provide a minimum of 30 day notification to add a financial institution.

Additional agencies may also be added. The Client will ensure that agencies for which payment will be made through the Compensating Balances payment process are approved by the Michigan Department of Treasury. The Consultant will add agencies to the Compensating Balances section of the invoice within 30 days of receipt of notice from the Client. Agencies will be added at the beginning of a billing cycle to avoid splitting payment source within a single month's invoice.

While the Consultant agrees to break down the invoice and accept payment directly from the financial institutions approved by the Client, the parties agree that the Client remains responsible for payment in full of any and all invoices not paid timely by a financial institution.

## **2.0 Responsibilities of the Parties**

The Consultant will be responsible for the following:

- Establish relationship with each financial institution involved in the Compensating Balances payment process to set up ongoing payment method.
- For ongoing transaction fees, create and send an invoice to the Client on a monthly basis for the transactions generated for the previous month. The invoice will clearly identify agencies associated with the Compensating Balances payment process.
- Provide invoice to the Client by the 15th of each month.
- Create and send an invoice to each financial institution for payment of transactions approved by the Client.
- Add additional agencies to Compensating Balances process as requested by the Client. New agencies will be added at the beginning of a billing cycle within 30 days of request from the Client.

The Client will be responsible for the following:

- Provide the Consultant with timely notice and information on financial institutions as they are added to the Compensating Balances payment process.

- Notify the Consultant as additional agencies are approved for the Compensating Balances payment process.
- Review and approve final invoices within 5 business days of receipt. An invoice is considered final when all errors identified by the Client have been corrected by the Consultant.
- Pay the Consultant through other payment source, any balance not paid within 30 days of invoice by a financial institution participating in the Compensating Balances payment process.

### **3.0 Key Assumptions**

- The Client is responsible for payment in full for all invoices. If funding is unavailable through the Compensating Balances payment process, the Client must make payment to the Consultant from an alternative funding source.
- All agencies sent to the Consultant as participants in the Compensating Balances payment process have been approved by the MI Department of Treasury.

### **4.0 Professional Services Requirements**

The Consultant will not provide any additional professional services as part of the SOW. Any professional services added to this proposal, or required as a result of this work, will be at the Client's expense.

### **5.0 Software Requirements & Specifications**

Consultant will not provide any additional software or licensing as part of this SOW. Any software or licensing added to this proposal, or required as a result of this work, will be at the Client's expense.

### **6.0 Hardware Requirements & Specifications**

Consultant will not provide any additional hardware as part of this SOW. Any hardware added to this proposal, or required as a result of this work, will be at the Client's expense.

### **7.0 Training**

Consultant will not provide any additional training as part of this SOW. Any training added to this proposal, or required as a result of this work, will be at the Client's expense.

### **8.0 Documentation**

Consultant will not provide additional documentation as part of this SOW.

### **9.0 Maintenance & Support**

Consultant will not provide additional maintenance and support as part of this SOW.

## 10.0 Project Schedule

The schedule for payment by compensating balance is as follows:

- Consultant provides monthly invoice to Client by the 15<sup>th</sup> day of the following month
- Client approves final monthly invoice within 5 days of receipt
- Consultant submits invoice to financial institution upon receipt of State approval.

## 11.0 Deliverables

The following are the deliverables to be provided as part of this SOW:

- Monthly invoice to State of Michigan
- Invoice to financial institution upon approval from State of Michigan.

## 12.0 Pricing and Payment

No changes will be made to the CEPAS transaction pricing.

## 13.0 Acceptance

The acceptance criteria per project milestone are defined below:

MILESTONE	ACCEPTANCE CRITERIA	SCHEDULE
1	FDGS sends monthly invoice	By the 15 <sup>h</sup> day of the following month
2	State of Michigan approves final monthly invoice	Within 5 days of receipt
3	FDGS sends compensating balance invoice to financial institution	Upon receipt of approval by State of Michigan.

In the absence of formal written acceptance from State of Michigan, if no issues have been reported to FDGS in writing within 5 days of the scheduled completion date, the Consultant will contact the Michigan Department of Treasury contacts to ascertain the status of the invoice review.

## 14.0 Change Management

- It may become necessary to amend this SOW for reasons including, but not limited to, the following:
  - Consultant or Client changes the scope of work and/or specifications for the Services.
  - Consultant or Client changes to the Project Schedule.
  - Material changes to assumptions outlined in this SOW.
- In the event either party desires to change this SOW, the following procedures will apply:

- The party requesting the change will deliver a Change Request document (to the other party). The Change Request will describe the nature of the change; the reason for the change and the effect the change will have on the scope of work, which may include changes to the deliverables and the schedule.
- Upon execution of the Change Request, said Change Request will be incorporated into, and made a part of, this SOW.
- Whenever there is a conflict between the terms and conditions set forth in a fully executed Change Request and those set forth in the original SOW, or previous fully executed Change Request, the terms and conditions of the most recent fully executed Change Request shall prevail.

## **15.0 Key Contact Information**

Tom Sharpe  
State of Michigan  
Department of Treasury, Receipts Processing Division  
517-636-5379  
[SharpeT@michigan.gov](mailto:SharpeT@michigan.gov)

Kristen Olson  
First Data Government Solutions  
303-792-5500 x139  
[kolson@fdgs.com](mailto:kolson@fdgs.com)

CN2. **E Change in Key Personnel**

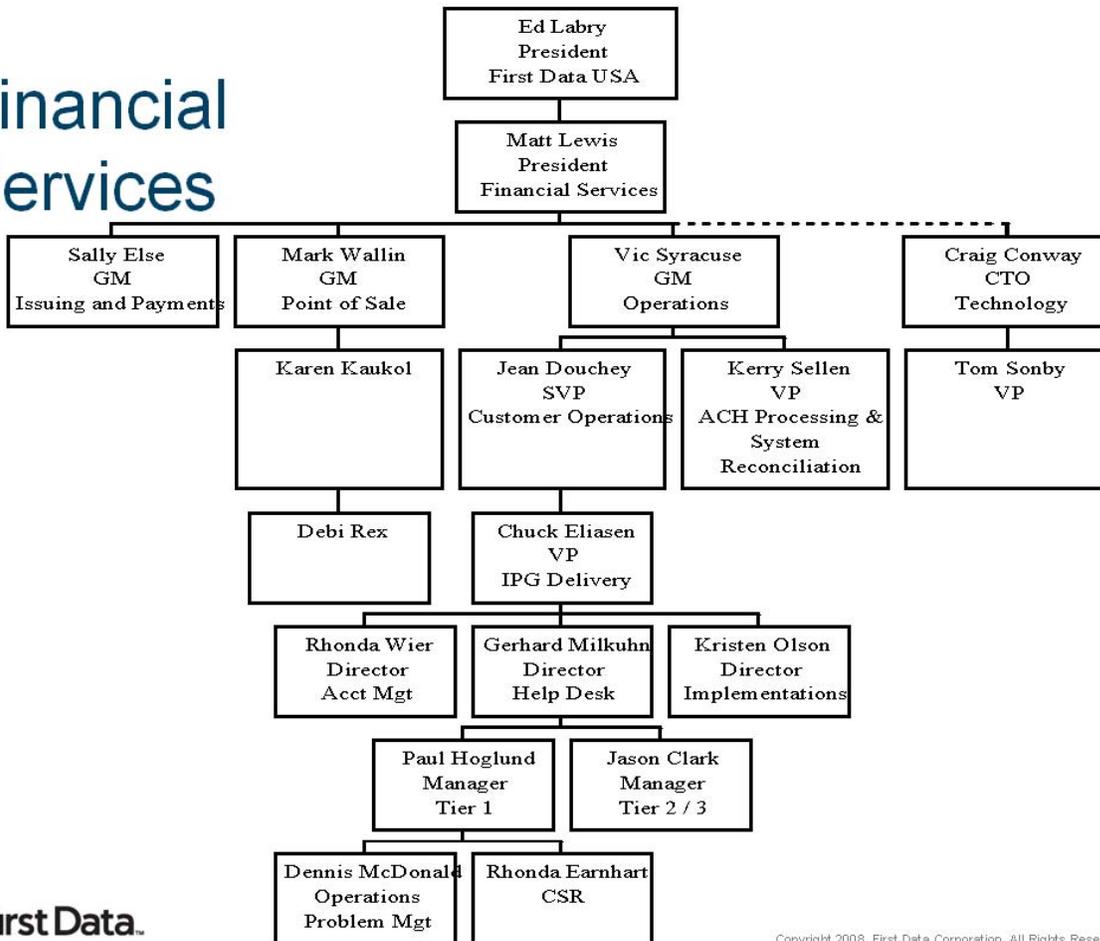
The Contractor Key Personnel diagram is hereby replaced by the following:

Name	Role	Responsibility
Paul Høglund	Business Support Specialists (PM)	Implementation Coordinator and lead customer service contact
<del>Mike Capistran</del> Benjamin Gillespie	Technical Support Specialist	Technical Support
<del>Kristen Olson</del> Rhonda Wier	Account Manager (PM for enhanced enrollment option)	Contract Administrator

Resumes for Benjamin Gillespie and Rhonda Wier are provided below.

An Updated Organizational Chart is provided below

# Financial Services



# **Benjamin Gillespie**

## **Data Center Operations Lead**

### **Career Summary**

Mr. Gillespie began his career as a Client Services Intern and since has played roles in implementations, network administration and Data Center operations. For the last 3 years, he has held the title of Data Center Operations Lead. His responsibilities include day-to-day operations of Data Center hosting of client applications and escalation support of First Data Government Solutions' internal Information Technology (IT). His Data Center Operations group has seen growth from one application for one customer to hosting 50 applications for 30 customers. The accounts are afforded our top-level of support, which includes proactive monitoring of the applications. He is responsible for utilizing and lending his expertise in our AccessNet® application environment and the Windows-based platforms upon which they are built. In addition, Mr. Gillespie is accountable for all network security and shared services. This support includes a disaster recovery site, 3 remote offices connected via Wide-Area Network (WAN) and two-thirds of our employees who operate remotely via our Virtual Private Network (VPN).

### **Education**

Thomas More College  
Crestview Hills, Kentucky  
Bachelor of Business Administration - Cum Laude 2004

### **Project Experience Summary**

#### ***First Data Government Solutions, LP*** ***DataCenter Operations Lead, 2004–Present***

Mr. Gillespie manages the Data Center operations group. He also provides assistance to the delivery teams.

- Applications with which he is currently involved include:
  - E-file business applications for Minnesota, Alabama, Iowa, Oklahoma, Oregon, Arkansas, New Hampshire, Pennsylvania, Puerto Rico and South Dakota, as well as for the cities of Toledo, Ohio and Cincinnati, Ohio.
  - Income tax applications for Nebraska and Iowa.
  - Do Not Call applications for Wisconsin, Mississippi, and Massachusetts.
  - Payment applications for the Ohio Attorney General's office and the city of Columbus, Ohio.
  - Unemployment applications for Kentucky Electronic Workplace for Employment Services.
  - Care Call and Medicaid Eligibility programs for South Carolina and our AuthentiCare® product.
  - Licensing registration for Illinois
  - 511 application for Tennessee

He is often consulted by our project teams and solutions engineering group to offer his expertise in application design and implementation best practices.

#### ***Michigan, Child Services*** ***DataCenter Operations Lead, 2004–Present***

- Daily monitoring of interactive voice response units which service 57 counties including the City of Detroit housed within the FDGS datacenter.
- Network Services which include proactive monitoring, intrusion detection, WAN connectivity between the state and FDGS, firewall administration.

***Puerto Rico, Sales Tax Electronic Filing***

***DataCenter Operations Lead, 2006–Present***

- Application Engineer responsible for automation of all backend processes including but not limited to import/export processes, file encryption/decryption, and NACHA file transfers.
- Implementation engineer responsible for hardware build, application installation, and ongoing support.
- Network Services which include proactive monitoring, intrusion detection, WAN connectivity between the state and FDGS, firewall administration.

***Tennessee, 511 Application***

***DataCenter Operations Lead, 2006–Present***

- VXML implementation engineer responsible for network architecture and design.
- Application Engineer responsible for automation of all backend processes including but not limited to import/export processes and file encryption/decryption.
- Implementation engineer responsible for hardware build, application installation, and ongoing support.
- Network Services which include proactive monitoring, intrusion detection, WAN connectivity between the state and FDGS, firewall administration.

***Illinois, License Registration***

***DataCenter Operations Lead, 2006–Present***

- Websphere implementation engineer responsible for network architecture and design.
- Application Engineer responsible for automation of all backend processes including but not limited to import/export processes and file encryption/decryption.
- Implementation engineer responsible for hardware build, application installation, and ongoing support.
- Network Services which include proactive monitoring, intrusion detection, WAN connectivity between the state and FDGS, firewall administration.

**Other Experience**

2000-2004      Kizan Technical Training      Cincinnati, Ohio

- Administrating and Implementing Microsoft Exchange 2003 Server
- Administrating and Implementing Microsoft Windows 2003 Server
- Microsoft Exchange Server 5.5

September 2005 Fred Pryor Seminars      Cincinnati, Ohio

- How To Supervise People

May 2006 Linkage Incorporated      Cincinnati, Ohio

- Management Fundamentals

## Professional History

2004 – Present First Data Government Solutions. Cincinnati, Ohio

### ***Data Center Operations Lead/ Network Security Engineer***

- Manage/Supervise Data Center Operations (Application Hosting) for more than 50 state and local government agencies.
- Responsible for Credit Card payment processes and ACH bank transfers that total over ONE BILLION dollars annually.
- Construct policies, procedures, and training for staff members to ensure client SLA's are met.
- Technical lead to employees concerning applications, their processes, as well as their maintenance. This includes but is not limited to software/hardware upgrades, bug fix implementations, and operating system patch release schedules.
- Support Delivery Team Initiatives for customer implementations achieved by attending project meetings as well as maintaining regular contact with the project teams throughout the project life-cycle.
- Maintain Client communication ensuring that all processing is understood, made efficient, and transitioned smoothly once the new application goes into production.
- Implement technologies in Data Center for hosted applications. This includes testing and recommending software or hardware that will assist in providing a more robust solution to the client as well as help the Data Center staff remain efficient.
- Regular review of Data Center staff functions making sure that procedures and policy are being adhered to.
- Provide after-hours Data Center application support reducing down time for time sensitive and critical applications.
- Network Security – Cisco Firewall and Intrusion Detection management
- Design, Build, and Support proprietary applications, which include server components, Telecom installation, and Windows NT, 2000, 2003 and SCO Unix administration

2003 - Present Gorman Heritage Farm (Non-Profit) Cincinnati, Ohio

### ***Lead Technical Consultant***

- Manage company wide Windows 2003 Active Directory
- Point of Sale software troubleshooting.
- Network Architecture Design and implementation. Including ongoing maintenance of all Firewall, Router, and WIFI connection points.
- Support of Voice over IP phone switching
- Remote Desktop support

2002 - 2004 GovConnect Cincinnati, Ohio

### ***Senior Network Administrator /Network Security Administrator***

- Manage company wide Windows 2003 Active Directory migration
- Managed Migration from Exchange 5.5 to Microsoft Exchange 2003
- Network security design, planning, and implementation including firewall, intrusion detection, router and switch management.
- Support the daily function of LAN and WAN including troubleshooting and preventative maintenance increasing overall efficiency while decreasing downtimes.
- Helpdesk Manager – Implemented 3<sup>rd</sup> party helpdesk solution, provide level 2 helpdesk support.
- Telecom installation and maintenance of T-1 and DS3 circuits for both voice and data connectivity.

2000 – 2002 Renaissance Worldwide Cincinnati, Ohio

### ***Network Administrator***

- IT Help Desk support Tier 1 internal staff.

- Microsoft Exchange 5.5 Administration

1997 – 2000 International Public Access Technologies Cincinnati, Ohio

***Client Services Representative***

- Remote administration of proprietary software application in a multiplatform environment. SCO Unix and Windows NT 4.0
- Installation of custom server configurations
- Cable Management and Installation

**Technical Skills**

***Hardware***

Dell PowerEdge Servers, Dell Latitude/Inspiron Notebooks, Dell Optiplex Desktops, Cisco, Compaq and HP servers, Netscreen

***Software***

Microsoft Active Directory, Microsoft Exchange 5.5 and 2003, Microsoft Systems Management (SMS), Windows Server Platform (NT, 2000, 2003), SCO Unix, Network Associates ePolicy, eRoom, Microsoft Office, Microsoft Front Page and Visio, Patchlink patch management software, Cisco IOS, Mercury Sitescope Monitoring, Attachmate,

***Networking***

Cisco Pix Firewall, Cisco Routers, Nortel ASN and AN Routers, Net Screen Firewall, Extreme Summit Switches, Nortel Bay Stack Switches, Cisco Content Switches, Cisco Local Director

***Programming Languages***

**References**

List three references - not FDGS employees - list clients and/or former employers. Need name, title, company, address, phone number and email address.

# Rhonda M. Wier

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Summary of qualifications	<p>Nineteen years of First Data experience encompassing a progression of increasing accomplishments and responsibilities. Background also includes twelve years of management experience, five years of external banking experience, twelve years of product and customer support of assigned client base of 275 client institutions (Official check, money order, and Retail). Primary strengths include excellent leadership skills, relationship building, analytical, communication, and interpersonal skills.</p>
Work experience	<p>May 1989- present First Data Corporation Englewood, Co</p> <p>Director, Delivery Services Sept. 2007-current</p> <p>Responsible for the day to day operations staff of the Technical Help Desk. Manage exempt and non-exempt employees in multiple states. Responsible for the monitoring and flow of file processing, incoming level 1 and level 2 calls, multi product support, partner with internal sources and vendor management. Responsible for employee satisfaction and skill enhancement.</p> <p><i>Sr. Manager/CSO Aug. 2001-Sept. 2007</i></p> <p>Responsible for the day to day team management of exempt and non-exempt personnel ensuring that accounts receive premier customer service. Responsible for establishing and implementing Service Level Agreements. Develop relationships with clients via conference calls, written communication, and on-site visits. Partner with various internal groups to pursue automation and technology. Responsible for employee satisfaction and skill enhancement. Develop training plans to satisfy business needs.</p> <p><i>Supervisor/OCMO CABS Nov. 1998- Aug. 2001</i></p> <p>Managed a staff of 10 to 15, monitored daily activities of personnel providing services, financial and non-financial entries related to the official check and money order products and services. This included but not limited to the reconciliation of client accounts, processing incoming/outgoing correspondence as well as the generation and distribution of reports. Analyzed the progress of department numbers and explained increases/decreases in file balances.</p> <p>Development Resources Specialists July 1997- Oct. 1998</p> <p>Responsible for the training and development of new and existing Operations staff. Create and implement training modules for Operations.</p> <p>Unit Leader/Analyst Mar. 1996-July 1997</p> <p>Responsibilities of this position were to coordinate the exception reconciliation of national retail accounts. This position was responsible for training department employees on various job duties. Track the daily departments work flow and escalated account issues. Responsible for improving current work processes, analyzing and providing direction on complex agent inquiries.</p> <p>Operations Analyst Jan. 1995-Mar. 1996</p> <p>Responsible for the preparation, follow up and resolution of all general ledger accounts for Operations. Provided monthly analysis to management, which included identification of major changes in exception files.</p>

**Unit Leader/Clearings** Sept. 1992- Jan. 1995

Responsible for the training of department staff. Providing production status for the department. Improve upon workflow processes, ensure completion and coverage of daily balancing, and assist staff with direction on various issues. Responsible for the preparation and research of monthly general ledgers.

**Official Check Agent Mgmt. Clerk** Mar. 1990-Sept. 1992

Responsible for the research and resolution of outstanding A/R and Deset file balances prior to aging greater than sixty days. Prepare daily production and monthly Cash Positions.

**Bank Reconciliation Clerk** May 1989-Mar. 1990

Responsible for the clearing of bank debits to bank credits. Provide support for issues to Accounts Receivable. Research of aged items on various MOBA(s).

Sept. 1986-May 1989                      United Bank/Littleton  
Littleton, Co.

**Teller** Dec.1998-May 1989

Responsible for taking deposits, cashing checks, and balancing cash drawer daily by 2:00 p.m. Customer service and multi- tasking.

**Bookkeeper** Aug. 1987-Dec. 1988

Research exceptions on customer accounts and post accordingly. Balance general ledger monthly; prepare reporting for upper management review. Maintain and update status on outstanding ledger entries.

**Customer Service Rep.** Sept. 1986-July 1987

Responsible for assisting bank customers with balancing their checkbooks and providing basic account information.

**Education**

2004-current    Denver University

- Various classes

**1995**                      **University of Phoenix**

- *Accounting I and II*
- *Intermediate Acct. I*

1989- current    Various FDC Management Courses

- Supervisory Skills (multiple courses)
- Interpersonal Communication Skills
- Performance Planning, etc.
- First Leaders

**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 28, 2007

**CHANGE NOTICE NO. 1 (Revised)  
 TO  
 CONTRACT NO. 071B7200068  
 between  
 THE STATE OF MICHIGAN  
 and**

NAME & ADDRESS OF VENDOR		TELEPHONE
<b>First Data Government Solutions          11311 Cornell Park Drive, Suite 300          Cincinnati, OH 45242</b>  <b>kolson@fdgs.com</b>		<b>303-792-5500 x139          Kristen Olson</b>
		VENDOR NUMBER/MAIL CODE
		BUYER/CA (517) 241-3215 <b>Steve Motz</b>
Contract Administrator: Mark Lawrence <b>Centralized Electronic Payment Authorization System - Statewide</b>		
CONTRACT PERIOD: From: <b>December 1, 2006</b>		To: <b>November 30, 2009</b>
TERMS	N/A	SHIPMENT
		N/A
F.O.B.	N/A	SHIPPED FROM
		N/A
MINIMUM DELIVERY REQUIREMENTS		
N/A		
MISCELLANEOUS INFORMATION:		

**NATURE OF CHANGE (S):**

Effective immediately, this contract is hereby amended to include the following changes:

- ◆ (CN1-A) Requirement changes that were identified and agreed upon in the requirements validation process.
  - FDGS key personnel changes.
  - New ACH breach notification language.
- ◆ (CN1-B) A statement of work is provided for the addition of Consumer Payments.
- ◆ (CN1-C) A statement from the Contractor agreeing with the above changes.

A detailed description of these changes has been provided in the attached documents. All other terms, conditions, pricing and specifications remain unchanged.

**AUTHORITY/REASON:**

Per Agency and Vendor agreement and DMB/Purchasing Operations approval.

**TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$ 2,431,722.00**

**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 14, 2007**

**CHANGE NOTICE NO. 1  
 TO  
 CONTRACT NO. 071B7200068  
 between  
 THE STATE OF MICHIGAN  
 and**

NAME & ADDRESS OF VENDOR  <b>First Data Government Solutions          11311 Cornell Park Drive, Suite 300          Cincinnati, OH 45242</b>  <b>kolson@fdgs.com</b>	TELEPHONE <b>303-792-5500 x139          Kristen Olson</b>
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-3215 <b>Steve Motz</b>
Contract Administrator: Mark Lawrence <b>Centralized Electronic Payment Authorization System - Statewide</b>	
CONTRACT PERIOD: From: <b>December 1, 2006</b> To: <b>November 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>	
MISCELLANEOUS INFORMATION:	

**NATURE OF CHANGE (S):**

Effective immediately, this contract is hereby amended to include the following changes:

- ◆ (CN1-A) Requirement changes that were identified and agreed upon in the requirements validation process.
  - FDGS key personnel changes.
  - New ACH breach notification language.
- ◆ (CN1-B) A statement of work is provided for the addition of Consumer Payments and the Compensating balance payment process.
- ◆ (CN1-C) A statement from the Contractor agreeing with the above changes.

A detailed description has of these changes has been provided in the attached documents. All other terms, conditions, pricing and specifications remain unchanged.

**AUTHORITY/REASON:**

Per Agency and Vendor agreement and DMB/Purchasing Operations approval.

**TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$ 2,431,722.00**

**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. 071B7200068  
 between  
 THE STATE OF MICHIGAN  
 and**

NAME & ADDRESS OF VENDOR		TELEPHONE
<b>First Data Government Solutions</b> <b>11311 Cornell Park Drive, Suite 300</b> <b>Cincinnati, OH 45242</b>  <b>DTomaka@fdgs.com</b>		(513) 489-9599 Ext. 141 <b>Dan Tomaka</b>
		VENDOR NUMBER/MAIL CODE
		BUYER/CA (517) 241-3215 <b>Steve Motz</b>
Contract Administrator: Mark Lawrence <b>Centralized Electronic Payment Authorization System - Statewide</b>		
CONTRACT PERIOD: From: <b>December 1, 2006</b> To: <b>November 30, 2009</b>		
TERMS		SHIPMENT
<b>N/A</b>		<b>N/A</b>
F.O.B.		SHIPPED FROM
<b>N/A</b>		<b>N/A</b>
MINIMUM DELIVERY REQUIREMENTS		
<b>N/A</b>		
MISCELLANEOUS INFORMATION:		
The terms and conditions of this Contract are those of this Contract Agreement, ITB #07116200156, and the vendor's quotes dated 4/26/06 and 6/28/06. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.		
<b>Estimated Contract Value: \$ 2,431,722.00</b>		

**THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the ITB No. 07116200156. Orders for delivery may be issued directly by the State Departments through the issuance of a Purchase Order Form.**

<b>FOR THE VENDOR:</b>	<b>FOR THE STATE:</b>
<b>First Data Government Solutions</b>	
_____ Firm Name	_____ Signature
_____ Authorized Agent Signature	<b>Greg Faremouth, Buyer Specialist</b>
<b>Charles Eliassen</b>	_____ Name
_____ Authorized Agent (Print or Type)	<b>IT Division, Purchasing Operations</b>
_____ Date	_____ Title
	_____ Date



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

Contract No. [07B7200068](#)  
Centralized Electronic Payment and Authorization System (CEPAS)

Buyer Name: [Steve Motz](#)  
Telephone Number: [517-241-3215](#)  
E-Mail Address: [motzs@michigan.gov](mailto:motzs@michigan.gov)



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**GLOSSARY**

<b>TERMS</b>	<b>DEFINITIONS</b>
Address Verification Service (AVS)	A service that verifies the billing address of a cardholder in a card-not-present transaction to help combat fraud, which then controls charge backs.
Application Program Interface (API)	The interface by which an application program accesses the operating system.
Association	A region or group of merchants established by a Department.
Authorization	Electronic message sent by a merchant to the processor which asks if the credit card presented is valid and can accept the charge.
Automated Clearing House (ACH) Network	A funds transfer system that provides for the inter-bank clearing of electronic entries for participating financial institutions.
Batch	A collection of records or transactions submitted for settlement, usually one day's worth.
CEPAS	The Centralized Electronic Payment and Authorization System (CEPAS) is an enterprise-wide electronic payment solution.
Credit Card	A plastic card in which the issuer (financial institution) establishes a revolving line of credit for its cardholder.
Debit Card	A plastic card used to initiate a debit transaction. In general these transactions are used primarily to purchase goods and services and to obtain cash, for which the cardholder's bank account is debited by the card issuer.
Department	Refers to agencies that make up State of Michigan government, such as Department of Treasury or Department of State.
Electronic Funds Transfer (EFT)	A generic term used to describe any ach or wire transfer. A transmission of money from one account to another utilizing the ach network.
Fiscal Year	The State's fiscal year starts on October 1 and ends on September 30. For example, Fiscal Year 2005 began on October 1, 2004 and ended on September 30, 2005.
Interactive Voice Response (IVR)	An IVR is a software application that accepts a combination of voice telephone input and touch-tone keypad selection and provides appropriate responses back to the caller.
Interchange Fee	A fee applied to a card transaction; applicable to the members participating in the transaction as issuer and acquirer. The applicable interchange fee is determined by the authorization method, settlement period, and data in the authorization/settlement record.
National Automated Clearing House Association (NACHA)	The national association that establishes the standards, rules and procedures that enable depository financial institutions to exchange payments on a national basis.
Notification of Change (NOC)	An advice sent by the RDFI to notify the ODFI the customer information provided is erroneous and needs to be updated.
Originating Depository Financial Institution (ODFI)	A participating financial institution that initiates ach entries at the request of its customers.
Pre-Notification	A non-dollar entry that may be sent through the ach network by an originator to alert an RDFI that a live transaction will be forthcoming. Verification of the account information is required.
Receiving Depository Financial Institution (RDFI)	Any financial institution qualified to receive ach transaction.
Returns	Any ach entry that has been returned to the ODFI from the RDFI



	because it cannot be processed. The reason for the return is included with the return in the form of a "reason code".
Routing Transit Number (RTN)	The American Banking Association (ABA) routing number is a unique, bank-identifying number that directs electronic ach deposits to the proper bank. This number precedes the account number printed at the bottom of a check.
Secure Socket Layer (SSL)	Encryption technology, which reduces the likelihood of payment card data from being intercepted as it passes through the internet.
Standard Entry Class Code	Three character codes that identify payment type within an ACH batch.
State	State of Michigan



## Article 1 – Statement of Work (SOW)

### 1.0 Project Identification

#### **1.001 PROJECT REQUEST**

The State of Michigan (State), through the Michigan Department of Treasury, Receipts Processing Division, and the Michigan Department of Information Technology (MDIT), with assistance of the Michigan Department of Management & Budget (MDMB), will work with the First Data Government Solutions (FDGS) (Contractor) to provide an enterprise-wide system for authorization and processing of electronic payments. This centralized system will support multiple electronic payment instruments and a variety of input channels.

This contract is a fixed unit price contract and has a maximum term of three (3) years with two (2) additional one (1) year renewal periods. Renewal of the contract will be at the sole discretion of the State and will be based upon the acceptable performance of the Contractor as determined by the State.

#### **1.002 BACKGROUND**

The Department of Treasury, Receipts Processing Division is responsible for administration of the State's electronic payment systems and, with MDIT and State agencies, has worked to provide a centralized system for use by all State agencies.

Prior to August 2003, electronic payment systems within State government were decentralized and therefore, at times, inefficient and difficult to maintain. Methodologies, processes, and system designs varied from payment program to payment program with no unified approach.

In August 2003 the State entered a contract with the current Contractor to supply an enterprise-wide centralized authorization and payment solution. Within State government, the centralized solution is known as the Centralized Electronic Payment and Authorization System (CEPAS).

CEPAS has been designated as the standard for making electronic payments to the State. Existing payment programs with a non-CEPAS solution are expected to transition to the CEPAS system by the 4<sup>th</sup> Quarter of FY2006.

Payment programs accept a variety of electronic payment instruments including credit card, debit card, and ACH debit. Payment programs can initiate payments through a variety of payment channels including Web, Interactive Voice Response (IVR), remittance processor, kiosks, manual key entry, and/or card swipe interface.

The State of Michigan currently has a statewide contract for credit and debit card processing services and acceptance of Visa/Master Card. The State has separate contracts with American Express, and Discover that allow acceptance of these cards. **State merchant applications will continue to use Vital Payment Services.**

The current CEPAS Contractor provides Originating Depository Financial Institution (ODFI) services. The CEPAS Contractor acts as a third party service provider and provides ODFI services by maintaining a relationship with a partnering financial institution. The State does not have a direct contractual relationship with the Contractor's ODFI. It is the intent of the State to continue to have the CEPAS Contractor provide the ODFI services needed to process ACH transactions.

The State reserves the right to purchase any or all hardware separate from this Contract.

The State has standards and guidelines that Contractors are expected to follow. Specifically, the State's Project Management Methodology (PMM) must be followed. The PMM, and other background information which may assist in the preparation of a proposal, may be reviewed at [www.michigan.gov/projectmanagement](http://www.michigan.gov/projectmanagement).



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

### **1.101 IN SCOPE**

The Contractor will supply and implement for State use an enterprise-wide system to process both credit/debit (pin-less and pin-based) cards and ACH debit payments that are submitted from multiple agency applications through a variety of payment channels including Web, IVR, Kiosks, Remittance Machine, software which allows Manual Key Entry, and/or card swipe device.

Note: Hereafter the term “credit card” refers to both credit and debit cards.

At the time that Pin Based Debit functionality is available, the State and the Contractor will review the requirements and any necessary modifications to the requirements will be made in accordance with section 1.403 CHANGE MANAGEMENT.

The Contractor will provide standard Application Program Interfaces (APIs) and Key Entry Screens to allow State of Michigan electronic payments to be collected, securely stored and settled, and the funds credited to the corresponding State bank accounts. The system will provide a response that contains a unique confirmation number and can be printed and used as a customer receipt.

The Contractor must develop the mapping and interface from the current API structure to the Contractor’s API structure.

The Contractor’s system will be capable of tracking individual business application activity at the application, agency, and statewide levels and allow authorized State users access, by authorized level, to search for payments and view details related to each transaction.

The Contractor’s system must have edits in place to identify and reject duplicate payments, be capable of calculating convenience fees, and be capable of collecting foreign addresses and accommodate processing of payments with foreign addresses.

The system must be capable of obtaining both real-time and batch authorizations for credit/debit card transactions and be capable of processing credit/debit cards swiped through a card reader, such as a keyboard card swipe device.

The system must provide the ability to cancel/void transactions prior to settlement and process full or partial refunds after settlement.

The Contractor will provide ODFI services to process ACH debit transactions under the contract.

The Contractor will receive ACH Notifications of Change and Returns and update the system and make Return information available to the agency.

If the State at its sole discretion exercises the option for an enhanced centralized enrollment process (described in Section B.12.) to allow State customers to set up financial accounts and schedule payments. The Contractor will collect and securely store customer account data and provide web pages, messaging, FAQs, on-line help, and an end user help desk with a toll free number to assist with password issues. The system will allow for future-dated ACH payments. ***(Portions of Section B.12. are Optional and may be exercised at the sole discretion of the State at the corresponding fixed rate lump some listed in Article 1, Attachment A, Table 8. These requirements are clearly marked as OPTIONAL in the following section. Pricing for this option is not included in the per transaction rates listed in Article 1, Attachment A Table 1.***

The Contractor’s system will comply with payment processing rules, regulations, and laws such as the NACHA Operating Rules, Card Association Operating Rules and Regulations, Payment Card Industry Requirements, Federal Regulation E, etc.

The Contractor’s system shall be comprised of redundant hardware and software and a fully functioning back up site that is a mirror image of the production site to provide for 99.9% system availability and infrequent periods of downtime.



The Contractor's system must not allow duplicate transactions to process.

The Contractor's system must provide fully functioning Initial Test and User Acceptance Test (UAT) environments that replicates the production environment. The UAT must allow for end-to-end testing and include true credit card and ACH settlement and refunds. The Contractor must also provide system documentation, training, training material, dedicated business and technical contacts, and 24/7 emergency support.

The Contractor's system must provide robust reporting capability that allows for a variety of production and statistical reporting as well as security reports that track user activity and user access rights.

***The Contractor has agreed to provide several product enhancements to meet the requirements of this contract. The enhancements are identified throughout the contract with an available date of 7/31/06. The State and Contractor recognize that the State views certain enhancements as more critical than others. Upon mutual agreement the State and the Contractor may revise the available date of certain enhancements to facilitate timely availability of higher priority enhancements.***

### **1.102 OUT OF SCOPE**

The State uses Vital Payment Services for the majority of the merchant applications. It is the intent of the State to continue to use Vital Payment Services. Contractor must continue to use Vital Payment Services as the credit card processing gateway.

The State currently has a statewide contract with a credit and debit card acquirer and for acceptance of Visa/MasterCard as well as separate contracts with American Express and Discover. These services are not included under this contract.

ACH Disbursements (except reversals and refunds), Electronic Benefit Transfers (EBT), and Wire Transfer processing are not included in this contract.

Receiving, processing, and depositing ACH Credit transactions initiated by State customers are not included under this contract.

### **1.103 TECHNICAL ENVIRONMENT**

Currently State agency applications use various methods to conduct e-commerce including the Web, Interactive Voice Response (IVR), remittance processor, kiosks, and key entry.

Most payment data and response messages are transmitted to and from the current Contractor over the Internet protected by 128-bit SSL encryption using standard Application Program Interfaces (APIs). For security reasons, some applications are required to utilize a Virtual Private Network (VPN) to connect to the Contractor.

The Contractor processes credit card authorization requests and settles transactions daily to Vital Payment Services via a Frame Relay connection. The Contractor also maintains a dedicated connection with the ODFI to facilitate secure transfer of ACH files.

### **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 identified in Section 1.101, In Scope, as set forth below:

#### **A. GENERAL TASKS**

- A1. **Proven Product:** The Contractor shall provide a proven product that has been successfully utilized as an enterprise-wide solution to process both credit card and ACH payments from multiple payment applications within the same organization through a variety of input channels.
- A2. **Vendor Demo:** RESERVED



- A3. **Eastern Time Zone:** All time stamps and time references on the Contractor's system shall be reflected in Eastern Time. This capability will be added to PayPoint's enhancement list and will be provided to the State by 7/31/2007.

## B. PAYMENT PROCESSING TASKS

- B1. **Numbering System:** The Contractor will provide a numbering system to uniquely identify each agency and application. This number should function like a credit card "merchant number". Each transaction should be associated with a program-unique identification number.
- B2. **Track Program Activity:** The Contractor's system must be capable of tracking individual business application activity at the application level, association level (like merchant chain or region), agency level, and statewide level and summarizing transactions at the association, agency, and statewide level.
- B3. **Application Program Interface (API):** The Contractor will be required to supply standard Application Program Interfaces (APIs) (Web Services and Secure HTTP) to allow State applications to connect to the Contractor and perform various payment functions. It will be the Contractor's responsibility to map applications using the current Contractor's API to the Contractor's API.
- B4. **System Compliance:** The Contractor is responsible for system upgrades to ensure the system complies with changes to NACHA Rules and Regulations, Credit Card Rules, Federal Regulation E, and any other applicable law or rule/regulation change. An annual PCI and SAS70 audit will be performed to ensure compliance with Credit Card and security requirements. The system must be in compliance by the time the change takes effect. The Contractor will provide written documentation to the Project Manager or designee describing any changes made to the system to maintain compliance within 7 days of completing the change. The system changes will be tested by the Contractor.
- B5. **Duplicate Check:** The Contractor will provide the ability to perform a duplicate payment check that is based on receiving the same payment information within a configurable time period. The system will compare account information, payment amount, transaction date and time, and information contained in the Comments field to determine if the payment has been duplicated. If a duplicate payment is detected the duplicate is rejected with the appropriate error message returned. The duplicate check minutes shall be configurable on an application-by-application basis and include the ability to skip duplicate checks.
- B6. **Convenience Fees:** The Contractor's system must have the ability to calculate a convenience fee if the merchant/application charges a convenience fee. The convenience fee must be processed as required by Visa, MasterCard, Discover and American Express rules (e.g. Visa requires the payment and the convenience fee to be combined and processed as one transaction). Contractor will make sure that if either the primary or convenience fee fails to authorize, the entire payment is voided and a decline is returned to the merchant's application. The ability to combine the convenience fee amount into a single transaction for specific card types will be added to Contractors enhancement list and will be provided to the State by 7/31/2007.
- B7. **Settlement:** Contractor's system must allow for settlement seven (7) days a week.
- B8. **Key Entry Payment Screen:** The Contractor will provide a payment data collection screen to allow for authorized State users to manually key or card swipe and submit a credit card or ACH payment. Once the payment has been submitted, the Contractor will send a real-time response message accepting or declining the payment. The contents of the response message will include a unique confirmation number, date, dollar amount, authorization code (if credit card), application name, and customer information. The screen shall allow for current date and post-dated ACH payments. The screen shall also allow for editing of rejected payment requests so the user can make changes to fields containing errors or invalid information and re-submit the payment without re-entering the entire transaction. In addition, a notification is sent via email to the State and/or Consumers of any failures in processing the payment successfully on its posting date.



- B9. **Foreign Addresses:** The State of Michigan accepts credit card and ACH payments for various products and services. The State receives payments from customers with Non-U.S. addresses. To accommodate customers, the State requires a system that can accept Non-U.S. addresses. The following outlines the requirements:
- A.) The Contractor's system will allow the collection of foreign addresses, including alphanumeric zip codes. This functionality will be provided to the State by 7/31/2007.
  - B.) The Contractor's system will have the capability to store the address as collected on all payment types including real-time, post-dated and enrolled (registered) accounts and scheduled payments. This functionality will be provided to the State by 7/31/2007.
  - C.) The system must have the capability to process authorization requests and retain the approval codes. For transactions that receive a successful approval, the system must have the capability of settling the transactions to Vital/ODFI. This would mean the system would need to identify transactions with foreign addresses at the time of settlement and change the fields to data acceptable to Vital/ODFI prior to sending the files. For example, transactions with alphanumeric zip codes may need to be changed to all zeros. This functionality will be provided to the State of Michigan by 7/31/2007.
  - D.) The system must provide the capability to research transactions that have foreign addresses and display the foreign address when the transaction is queried. This functionality will be provided to the State of Michigan by 7/31/2007.

#### B10. **Credit/Debit Card Tasks**

Currently, the State accepts Visa, MasterCard, Discover and American Express credit/debit cards. The Michigan Department of Treasury (Treasury) administers the credit card contracts and utilizes LaSalle Bank as the depository bank for credit/debit card revenue. The State uses NOVA Information System (NOVA) as the merchant Acquirer. The Contractor must be capable of managing Multiple State agency credit/debit card applications.

The Contractor shall provide the logic to capture the credit/debit card information and send the information to Vital for authorization of the transaction. The transaction may be for corporate or consumer. The credit card transactions may be initiated through Internet, IVR (phone), fax, kiosk, mail, interface, point-of-sale devices, manual key entry, card swipe, and face to face. Both card-present and non card-present situations will occur. Credit/Debit Card processing must be in compliance with Federal Regulation E, Merchant Operating Guides for the credit cards, and other regulations that may apply.

**NOTE: Debit card (on-line) processing with pin number access authorization.** System verifies funds are available and funds are withdrawn from the checking account instantly. This type of debit transaction can only be used in a card present situation where the merchant has a pin pad so the customer can key in his/her personal identification number (PIN). This type of transaction incurs lower merchant fees.

**Debit card (off-line) processing.** Acts like a credit card for authorization. Transaction verifies the account is active, funds requested are available and the card is not stolen or expired. The funds are debited from the checking account with a two or three day settlement period. This type of debit transaction can be used at any merchant that accepts Visa or MasterCard.

If Debit card (on-line) non-face-to-face becomes available, the State is interested in pursuing this option with this Contractor-provided solution.

The following is a list of requirements for credit/debit card transactions.

- A.) **Payment Methods:** The Contractor's system must accept the following payment methods: PayPoint will support PIN based debit processing through Vital by 7/31/2007.



- a.) Credit card – Visa, MasterCard, Discover, and American Express
- b.) Debit Cards, PIN less – These transactions are processed as a credit card (FDGS processes through the First Data Commercial Services Platform)
- c.) Debit Cards, PIN based – Card present where the card holder is required to enter a PIN number

### **Contractor's System Presently Meets these Requirements**

#### **Contractors Response to Requirement:**

*PayPoint supports the ability to process Credit Card, PIN less Debit and PIN based debit.*

*Credit Card processing supports Visa, MasterCard, Discover and American Express credit/debit cards via our Vital gateway.*

*Debit Card (Off-Line) is supported in our current production release for the STAR, PULSE and NYSE networks via our Concord gateway.*

*Debit Card (On-Line) is supported in our next release of PayPoint 1.5 due for release into production in May 2006 via our Concord gateway.*

- B.) **Payment Channels:** The payment will be single entry. The Contractor's system must have the ability to accept payments initiated by:
  - a.) Internet
  - b.) Interactive Voice response Unit (IVR)
  - c.) Remittance Machine
  - d.) Kiosk
  - e.) Manual Key Entry
  - f.) Point of Sale Device (e.g. credit/debit card terminal, wedge reader, card swipe keyboard, etc).
  - g.) Other Interfaces
  
- C.) **Capture Data:** The Contractor's system must capture and store the following:
  - a.) Credit/debit card number
  - b.) Expiration Date
  - c.) Customer Name
  - d.) Customer Address
  - e.) Transaction date
  - f.) Settlement date
  - g.) Comments field (field Contractor provides for program to use for nonsensitive information that ties the payment to the programs legacy system. For example, invoice number or company id.)
  - h.) Card Verification Value (CVV2), Card Validation Code (CVC2), Cardholder ID (CID), Card Security Code (3CSC) (Please note: These are only to be captured, not stored)
  - i.) All fields required to qualify for the best interchange rates as required by Visa and MasterCard (e.g. sales tax, purchase id, authorization code, ECommerce indicator, etc.)
  - j.) Other data as required by Visa, MasterCard, Discover and American Express.
  - k.) A shipping address if different from the billing address.
  
- D.) **Search Criteria:** With appropriate security (See Security Section), the Contractor's system must provide the ability to access, search and retrieve transaction information by:
  - a.) Customer Name
  - b.) Confirmation Number (unique number assigned to each transaction)
  - c.) Transaction date (and date ranges)
  - d.) Amount
  - e.) See Below: Search by Settlement Date (and date ranges)
  - f.) Comments field (field Contractor provides for program to use for nonsensitive information that ties the payment to the programs legacy system. For example, invoice number or company id).



- g.) See Below: Search by Authorization Code
- h.) Application
- i.) Agency name
- j.) Truncated Credit/Debit Card Number (e.g. Last 4 numbers)

Contractor will add the following payment search capabilities to PayPoint's enhancement list will provide this functionality by 7/31/2007.

- e.) Search by Settlement Date (and date ranges)
- g.) Search by Authorization Code

PayPoint currently supports searching by Site, Agency or Application and cannot support the ability to add an Association level for searching.

E.) **Transaction Detail:** The Contractor's system must display details of the processed transactions.

Details must include (but not limited to):

- a) Truncated Credit/Debit Card Number (e.g. Last 4 numbers)
- b) Card Expiration Date
- c) Amount (Original sale and subsequent refund(s))
- d) Transaction date
- e) Authorization Code
- f) Issuer response to Authorization
- g) Address Verification Response code (If applicable)
- h) CVV2/CVC2/CID Response code (If applicable)
- i) Invoice/Purchase ID
- j) Time authorization request sent to Vital
- k) Time authorization response received from Vital
- l) See below: Payment time stamp (in Eastern Time)
- m) Confirmation Number (unique number assigned to each transaction)
- n) Status of payment (Approved, Declined, Settled, etc.)
- o) Customer Name (if collected)
- p) Customer Address (if collected)
- q) Settlement Date
- r) Agency name
- s) Application/Merchant Name
- t) Other fields required by Visa, MasterCard, Discover and American Express.
- u) Comments field (field Contractor provides for program to use for nonsensitive information that ties the payment to the programs legacy system. For example, invoice number or company id.)
- v) Customer Phone Number (if collected)
- w) Customer Email Address (if collected)

The following element is not currently displayed as part of Payment history but upon award First Data Government Solutions will add the following payment details to PayPoint's enhancement list. This functionality will be provided to the State by 7/31/2007.

- l) Payment time stamp (in Eastern Time)

F.) **Authorizations:** The Contractor's system must provide the ability for on-line real time authorizations and also must allow for batch authorizations as dictated by the application (e.g. Remittance processing equipment uses a batch authorization process).

1. The authorization process must be capable of running unimpeded concurrently with the settlement process.



2. Authorization requests must be returned in 5 seconds or less for those requests under Contractor's control. However Contractor cannot guarantee the timing of third party gateways such as Vital when processing an authorization.
- G.) **Cancellation/Void:** The Contractor's system must provide the ability to cancel or void the transaction prior to settlement.
- H.) **Refunds:** The Contractor's system must have the ability to process full and partial refunds for credit/debit card transactions with appropriate agency online approvals and limited user access. The Contractor's system will ensure that the refund amount does not exceed the original payment amount.
1. The Contractor's system must have the ability to process refunds on expired cards without requiring the user to input a valid expiration date.
  2. The Contractor's system will only allow refunds of previously processed transactions.
- I.) **Card Present Transactions:** The Contractor's system must have the ability to process card present transactions where the card is swiped through a card reader (e.g. credit/debit card terminal, wedge reader, card swipe keyboard, etc).
1. The Contractor's system must have safeguards that limit the fields allowed to be populated with the contents of the card's magnetic strip. For example, on a Contractor's key entry screen that allows a State employee to enter payment information, the contents of the magnetic strip should not be allowed in any other fields except the field dedicated for capture of magnetic strip data. Contractor will provide a new button called "Click and Swipe Card". Payment User will press the button and then swipe the consumer's card through the keyboard reader. Contractors interface will accept the input and apply contents to appropriate fields on our Administrative Make a Payment screen. Contractor will remove the track data field from the screen view as a part of this functionality change. This functionality will be available by 7/31/2007.
- J.) **Customer Receipt:** The Contractor's system must provide a confirmation number, settlement date, amount, authorization code and other data as required by the credit card companies in order for the agency application to provide the data back to the customer to act as a receipt. The Contractor must provide the ability to create a receipt for transactions processed through the manual key-entry screen.
- K.) **Merchant Number:** The Contractor's system must capture and store the merchant number.
- L.) **Settlement:** The Contractor's system must provide the ability to establish and change daily cut off times in order to meet the State's Credit Card Processor's settlement times for the State to get the lowest interchange and transaction rates available through the credit card companies and maximize the State's cash flow for timely deposit of funds.
1. Contractor's system must allow for settlement seven (7) days a week.
  2. The Contractor's system must collect all transactions processed up to the State's established settlement cut-off and send the transactions (in Batch form) to Vital. Transactions processed after the established settlement cut-off time will be held until the next day's settlement. For example: If the State's settlement cut-off time were 11:59 p.m. EST, the settlement batch would contain transactions processed from 12:00 a.m. EST. to 11:59 p.m. EST.
  3. The Contractor will settle one batch per merchant/program to Vital daily at the settlement time established by the State.



4. The Contractor will have edits/internal controls in place to ensure transactions are settled/processed accurately (e.g. correct card #, merchant/program, amount, etc.) and timely (daily at State's established settlement cut-off). After submission of a batch, System will validate the results of the batch received from the process and automatically compare the results with information submitted in the batch. Discrepancies are audited and alert Contractors 7x24 monitoring staff that is able to work with the processor to determine cause of the discrepancy and make appropriate adjustments as necessary.
5. The Contractor must process the required transaction data in the required time frames to Visa, MasterCard, Discover and American Express in order for the State to receive the lowest applicable interchange (processing fee) rate.

If the Contractor fails to meet the requirements for the State to receive the lowest interchange rate, the Contractor will be responsible for reimbursing the State for the difference between the lowest applicable interchange rate and the downgraded rate and any fines that may apply.

Interchange reimbursement(s) will be credited to the State's monthly invoice.

The Contractor must correct the problem(s) within 48 hours of notification of such inaccuracies.

M.) **Fraud Prevention:** The Contractor's system must provide the ability to use Address Verification Service (AVS), Card Verification Value (CVV2), Card Validation Code (CVC2), Cardholder ID (CID), Card Security Code (3CSC), and other fraud prevention tools as required or introduced by Visa, MasterCard, Discover and American Express.

PayPoint does not currently support Verified by Visa or MasterCard SecureCode. If these additional validations are required to obtain PCI Certification FDGS will support the additional authorization mechanisms.

**B11. Automated Clearing House (ACH) Tasks:** The following tasks are related to ACH payment processing:

- A.) **Payment Channels:** ACH debit transactions will be initiated through the Internet, IVR, point of sale device, and manual key entry. Other interfaces are possible in the future.
- B.) **Search Criteria :** With appropriate security, users will have the ability to access or retrieve payment information by user security level using:
  - a.) Customer Name
  - b.) Confirmation Number (unique number assigned each transaction)
  - c.) Transaction Date (when both initiated and processed and date ranges)
  - d.) Amount
  - e.) Settlement Date (and date ranges)
  - f.) Routing Transit Number (RTN) and truncated account number (ex. Last 4 digits)
  - g.) Comments Field data
  - h.) Statewide
  - i.) Agency
  - j.) Application
  - k.) Truncated account number
- C.) **Transaction Detail:** The Contractor's system must display details of the processed transactions. Details must include (but not limited to):
  - a.) Truncated Account Number (e.g. Last 4 numbers)
  - b.) Amount (Original sale and subsequent refund(s))
  - c.) Transaction date



- d.) See below: Payment time stamp (in Eastern Time)
- e.) Confirmation Number (unique number assigned to each transaction)
- f.) Status of payment (Approved, Declined, Settled, etc.)
- g.) Customer Name (if collected)
- h.) Customer Address (if collected)
- i.) Settlement Date
- j.) Agency name
- k.) Application/Merchant Name
- l.) Comment field (field Contractor provides for program to use for non-sensitive information that ties the payment to the programs legacy system. For example, invoice number or company ID.)
- m.) Customer Phone Number (if collected)
- n.) Customer Email Address (if collected)
- o.) Invoice purchase ID

The following element is not currently displayed as part of Payment history but will be available by 7/31/2007.

- d.) Payment time stamp (in Eastern Time)

- D.) **Verification of Routing Transit Numbers:** The Contractor's system will have the ability to:
  - a.) Compare routing transit number at time of entry to an algorithm or database (such as the Federal Reserve's) to verify if a routing transit number is valid.
  - b.) If not valid, provide a response to on-line customer to reenter the erroneous information or select another payment method.
  - c.) The customer should only have to reenter the erroneous information.
  
- E.) **Cancellations/Refunds:** The Contractor's system will have the ability to cancel previously initiated transactions prior to the settlement cut off time.
  - a.) After the settlement cut off time, the system will allow users with the appropriate security to refund either all or a portion of a previously settled transaction.
  - b.) Cancellations and refunds can be manually processed using the system's administrative screens and functionality or by utilizing a refund/cancel payment function through the API.
  - c.) The Contractor's system will limit the refund amount to the amount of the original transaction and refunds can only be issued on previously processed transactions.
  
- F.) **Customer Receipt:** The payment response sent to the customer from the Contractor's system will contain the application name, customer name, transaction number (unique number assigned to each transaction), date, amount, authorization language, and allow the customer to print the response to act as a receipt for the transaction. The Contractor must also provide the ability to create a receipt for transactions processed through the manual keyentry screen.
  
- G.) **Cancel Pending Transactions:** The Contractor's system must allow State users, with the appropriate access rights, to access the system's administrative screens and cancel future dated ACH transactions that are being warehoused. The cancellation must take place prior to the transaction being processed for settlement.
  
- H.) **Settlement.** The Contractor will submit files to the ODFI seven days a week.
  - a.) **Separate Batches:** At the designated settlement cut off time of 11:59 p.m. the Contractor's system will assemble the day's ACH transactions into the file with multiple batches in standard ACH format and forward to the Contractor's ODFI.
  - b.) The file will contain a separate batch for the ACH transactions for each State application.



- c.) The Contractor's system must also have the ability to change daily cut off times in order to meet processing needs, which could include adjusting the ACH cut off to be consistent with the credit card cut off time
  - d.) The Contractor will have edits or internal controls in place to ensure transactions are settled/processed accurately and timely. Should issues arise with the settlement, PayPoint has an audit and alerting system that notifies 7x24 operational staff of delayed or discrepancy in settlement processing who address the issue immediately.
- I.) **Application Identification:** The Contractor will collect information during application set up to populate the "Company Name" and "Company Entry Description" fields of the Batch Header. This information will be used to identify the State application and purpose of the ACH debit so it will appear on the customer's bank statements. A future enhancement to add Company Entry Description and Company Name will be available by 7/31/2007
- J.) **Prenotifications:** The State will not use prenotifications for ACH transactions processed under this contract.
- K.) **Standard Entry Class Codes:** The Contractor must use the appropriate NACHA Standard Entry Class Codes for ACH transactions processed under this contract.
- L.) **Legal and Rule Compliance:** The Contractor agrees that all processes related to ACH processing are in compliance with the NACHA Operating Rules, applicable State legislation, Federal Regulation E, and any other provisions of U.S. law and will remain in compliance.
- M.) **Warehousing:** The Contractor will warehouse future dated transactions until one day prior to the settlement date. Warehousing of transactions will not exceed 365 days.
- N.) **Originating Depository Financial Institution (ODFI):** The following tasks relate to the ODFI:
- 1.) The Contractor will provide for ODFI services to process ACH transactions under this contract. Any cost associated with the ODFI services are to be included in the per transaction fee price submittal in the Contractor's price proposals.
  - 2.) The Contractor is responsible for all costs associated with establishing a secure telecommunication connections with the ODFI to ensure information contained in the ACH files is safe from unauthorized access.
  - 3.) The Contractor will originate ACH debit files on behalf of the State. The ODFI shall be responsible for transmitting/receiving files of ACH entries to/from the Contractor.
  - 4.) The Contractor will be the point-of-contact for questions and issues relating to the performance and daily operations of the ODFI. The Contractor is expected to provide detailed responses to routine questions relating to ODFI issues within 24 hours of the question being presented to the Contractor's designated contact. Emergency issues will require response within 30 minutes of the question being presented to the Contractor's designated contact.
  - 5.) The ODFI utilized by the Contractor must maintain a principal or branch office within the State of Michigan.
  - 6.) The Contractor shall create a separate batch for each State application in the daily ACH settlement file. At set up, each State application will provide the Contractor with a Routing Transit and Account Number for the ODFI to deposit the funds for the application's daily settlement. On the settlement/effective date of the transactions, the ODFI will credit the corresponding application's account for the total dollar value of its batch of transactions.



7.) The Contractor is responsible for ensuring that the ODFI is in full compliance with NACHA Operating Rules, including the requirement that the ODFI undergo an annual compliance audit. The Contractor must provide a summary of the ODFI's annual compliance audit results upon request.

O.) **Notification of Change (NOC):** NOCs shall be handled to ensure customer account information stored on the Contractor's database is corrected prior to processing the next live entry.

P.) **Return Entries:** ACH return entries shall be handled so that State agency application staff can access information daily on return entries received.

1.) The Contractor is required to ensure that return entries are posted to the State agency application bank account individually and not as one total amount.

**Contractor's System Presently Meets these Requirements**

**Contractor's Response to Requirement:**

*First Data Government Solutions' solution performs net Settling. We are looking at changes to our ACH processing that will allow returns to post to the State agency application bank account individually.*

2.) The Contractor must allow entries that are returned for insufficient or uncollected funds to be reinitiated up to two times following the return of the original entry. The Contractor is responsible for the reinitiating of entries. Reinitiating of return entries will be optional at the discretion of each State application and communicated to the Contractor at set up. Return entries must be processed timely to reduce the risk of additional ACH transactions to the same accounts.

3.) The State may require the Contractor to provide a process that generates an email to the customer to inform them of the return entry and provides information on how the customer can contact the application staff or resubmit payment. Contractor will add additional capability to their existing consumer notification sub-system to support emailing a notification to consumers making ACH payments that are returned. This functionality will be provided by 7/31/2007.

Q.) **Guarantee Option:** The State may have agency applications that require that the Contractor guarantee ACH transactions. The guarantee service will require the Contractor, for a fee, to take on the risk associated with the transaction being returned. If a guarantee service is available provide an estimated cost associated with this service in Article 1, Attachment A, Price Proposal, Table 3.

R.) **Authentication Capabilities:** The Contractor shall provide information validation capabilities to assist in authenticating State customers. This requires the State's application to collect and pass the consumers Drivers License number or Tax ID. Contractor's solution bounces these numbers against national database as part of our payment authorization process.

S.) **Timely Processing:** The Contractor must provide timely processing of ACH transactions. If the Contractor fails to meet the daily cutoff times, the Contractor will be responsible for reimbursing the State for the lost interest earnings on the transactions. Interest earnings will be calculated based upon the value of the total ACH transactions settled late, multiplied by the earnings credit rate earned by the State at LaSalle Bank and the numbers of days lost in settling the transactions.

Interest reimbursements to the State will be credited to the State's monthly invoice.

The Contractor must correct the problem within 48 hours of notification of such inaccuracies.



**Portions of Section B.12. are Optional and may be exercised at the sole discretion of the State at the corresponding fixed rate lump sum listed in Article 1, Attachment A, Table 8. These requirements are clearly marked as *OPTIONAL* in the following section. Pricing for this option is not included in the per transaction rates listed in Article 1, Attachment A Table 1.**

**If the State requests the Contractor to implement the Optional enhanced enrollment functionality, Contractor will assign Dan Tomaka as Project Manager to manage the development and implementation of the enhanced enrollment. If Mr. Tomaka is unavailable the State reserves the right to approve his replacement.**

**B.12. Enrollment, Scheduled, and Future Dated Transactions.** The Contractor's system must be capable of enrolling customers and securely storing customer credit card and bank account information. The system must also allow for scheduling and future dating of payments.

A.) ***OPTIONAL - Enrollment Process:*** The Contractor will provide a Centralized Enrollment System (CES) that will allow State customers to setup financial accounts and schedule payments independent from State business applications. The Contractor's system will securely collect and store customer account data. Upon initial on-line setup, the customer will establish a User ID and, after appropriate authentication, be assigned a Password. The User ID and Password will relate to an Enrollment ID on the Contractor's system. The Enrollment ID will relate to the financial accounts stored in the CES database. The customer can enroll by using two different methods. The customer can access the CES site directly and create on enrollment or they can create on enrollment the first time a State business application directs them to the CES. For customers that access the CES site directly, the Contractor must authenticate the customer as required by NACHA rules. The customer will use this User ID and Password to access a list of their financial accounts and select a payment method. Only the last four (4) digits of the account number will be displayed. Customers will have the capability to setup 10 different credit/debit (pinless) card accounts and 10 different ACH debit accounts.

To make an enrolled payment, the State's business application will be responsible for directing customers to the CES. The CES will authenticate the calling business application requesting service. The CES will require the customers to authenticate requesting service. The CES will require the customers to authenticate themselves by entering a valid User ID and Password. Once logged into the system, the system will present the financial accounts previously enrolled. Only the last four (4) digits of the account number will be displayed. The customer will select the account from which they wish to make an electronic payment. The customer will also have the option of updating or deleting previously established accounts. The CES will initiate a payment through the Contractor's system using the amount from the business application and account selected. Once the payment has been processed, the CES will send a payment acknowledgement/confirmation message back to the State business application. The business application will present a confirmation page to display the status of the payment and other relevant information.

#### **Contractor's Response to Requirement:**

*First Data Government Solutions will develop an independent consumer enrollment system on top of its existing Registration and Recurring Payment capabilities that will provide the features described in this requirement.*

*This solution will include the following components:*

*Consumer Enrollment Web – This will be a generic web interface to be used by any Site, Agency, and Application where consumers can perform the following functionality:*

- *First Time User Enrollment – Users who access our enrollment web for the first time either by linking to our site from a state web page or through the process of making a payment obligation that*



*links them to this site will be presented the option to enroll as a first time user. This process will require the user to identify key information such as their name, email address, shared secret and other general information identified by the State that is used to validate the user. Upon enrollment the user will be prompted to identify an account name and password to be used on all subsequent visits to the Enrollment/Payment system. Users who forget their passwords can utilize the shared secret defined as part of enrollment to reset their passwords.*



- *Account Management – Users will be provided with options to View, Add, Delete, Update accounts. We will support an unlimited number of accounts associated with an enrollment. When creating or modifying accounts, users will be presented with options to provide a name to their account, the type of account (i.e. Credit Card, E-Check, Debit, etc.) and the required information for each type of account. Account information will be stored as registrations in PayPoint’s existing registration system. All information is stored in a secure environment and sensitive data such as account numbers are fully encrypted*
- *Make Payment Interface – As a result of a real-time payment request from a State’s application the Consumer Enrollment web will present to authenticated users an interface to execute the payment through the enrollment site. Results of the payment will be re-directed back to the calling application along with the results so that the original application can represent the final confirmation. The Make Payment Interface will allow the user to enter a one-time entry of their type of payment account and payment details or they can choose from previously created accounts. They also will have the option to use address information stored on their enrollment or to change the address information for an individual payment. Consumers will be prompted for the type of payment (i.e. Credit Card, E-Check, Debit, etc) and will then be prompted for the payment details appropriate for that type of payment. If the payment is being made for an account not currently on file the user will be presented with options to store this account information for future use within our Enrollment system.*
- *Recurring Payment Management – As a result of a payment request from one of the State’s applications users will have the ability to request that the payment be executed on a recurrent schedule. Our enrollment site will provide the ability to view currently scheduled payments, change schedules, delete schedules, or cancel upcoming scheduled payments.*

*Enrollment Administrative Web – This will be a generic web interface to be used by the administrators of the State and/or Site owners of the application as well as our support staff. The administrative site will have the following capabilities:*

- *Consumer Enrollment Management – Administrators will be able to search for consumer enrollments by account or name. Search results returned will provide details that allow administrators to identify the enrollment if multiple matches were identified. Administrators can view the consumer’s enrollment information or change the password for an enrolled consumer and/or force a change of password on next entry to the enrollment system by the consumer. When viewing details of an enrollment sensitive data such as account data will be truncated.*
- *Enrollment Disable/Enable – From the Consumer Enrollment Management interface, administrators will have the ability to enable or disable an enrollment account. Users who are disabled will be rejected when attempting to make a payment through an enrolled account or bar them from logging into the enrollment site to manage their information and/or accounts.*

*Run-Time API – We will provide an HTTP based API interface that will allow State application integrate payment execution through our Enrollment system. The calling application will have to pass key information associated with their specific payment such as application identifiers, password, payment amount and reference data to the enrollment system for use in the payment process. In addition the calling application will have to identify a response URL where the users will be redirected back to their application upon completion of the payment process through our enrollment system. Users will be redirected to the PayPoint enrollment site to create (for first time users) or authenticate themselves within the enrollment site. Once in they will get through the Make Payment process described above. At the completion of the payment we will redirect the user back to the State’s application along with the results of the payment process.*

*Notifications – The Enrollment system will support the ability to alert via email, consumers of accounts that have expiration dates approaching asking them to update them. In addition, during the Make Payment process if it is determined that a user has selected an account with an expired account they will be asked to provide updated information.*



*Housekeeping – Housekeeping services will be built to support the purging inactive enrollments.*

*Documentation / Training – First Data Government Solutions will provide Developer, User and Administrative documentation associated with its Enrollment system. Training will be provided for the CEPAS staff on a one-time basis. User Documentation along with Frequently Asked Questions section will be available to users on all screens within the Enrollment site.*

The following tasks relate to the enrollment process:

1. ***OPTIONAL - Create Enrolled Accounts:*** The customer will create enrolled accounts on-line by being directed to the CES by the State business application or by directly accessing a CES web site. The CES will create a unique Enrollment ID to link the User ID and Password to the customer's financial account information stored on the CES. The Contractor will perform a preliminary edit of financial account information to identify and reject invalid Routing Transit Numbers, credit card numbers that do not pass check digit routines, have invalid expiration dates, etc. Failed/erred transactions will be communicated to the customer so they can enter again to correct. Once successfully enrolled, the customer will be presented with a printable confirmation page.

**Contractor's Response to Requirement:**

*First Data Government Solutions' Account Management performs edits on the Credit Card Numbers and expiration dates to ensure they are valid card numbers and on E-Check routing number to ensure they are valid routing numbers using the Federal Reserve's latest routing number information at the time a consumer creates an account. Our web interface clearly identifies the incorrect information and allows users to correct their information and re-attempt to save the account information. Accounts are not stored unless they pass our edits. Unique identifiers are associated with each account the user has on file. We provide the ability for a Consumer to print off all of their Account identifiers and information to keep as an offline record of their enrollment. Account numbers on this output only display the last 4 digits of any account number.*

2. ***OPTIONAL - Enrolled Account Information:*** The customers can set up both credit/debit (pin-less) card and ACH debit accounts in one enrollment session. The CES will allow the customer to enter and store up to ten (10) credit/debit (pin-less) cards and/or ten (10) bank accounts per Enrollment ID. The CES will allow customers to create, view, update, or delete financial data. Only the last four (4) digits of the account number will be displayed. Enrollment will include collection of a "shared secret" and email address to facilitate password reset.

**Contractor's Response to Requirement:**

*Our solution supports the ability to store unlimited number of accounts unless the State wishes to restrict it to only 10 accounts. This allows large business payers to manage any number of accounts they may pay State obligations. Each account is specific to the payment medium such as Credit Card, PINless Debit, and e-Check. Account Management features are included to allow users to view, update, and delete accounts. Our enrollment process captures shared secret details to allow users who forget their password to change the password if they can identify the appropriate shared secret.*

3. ***OPTIONAL - State Business Application:*** When the customer is accessing their account information through a State business application, the application will pass information identifying the application, the payment amount, and a return web page to which the CES will direct the customer after completing the payment process. The CES will pass payment status



information to the business application for presentation to the customer. The response cannot contain financial account information. The State business application will present a confirmation page to the customer.

**Contractor’s Response to Requirement:**

*First Data Government Solutions provides an HTTP based API interface that allows State application integrate payment execution through our Enrollment system. The calling application passes key information associated with their specific payment such as application identifiers, password, payment amount and reference data to the enrollment system for use in the payment process. In addition the calling application identifies a response URL where the users are redirected back to their application upon completion of the payment process through our enrollment system. Users are redirected to the PayPoint enrollment site to create (for first time users) or authenticate themselves within the enrollment site. Once in, they go through the Make Payment process described above. At the completion of the payment we redirect the user back to the State’s application along with the results of the payment process. Results do not contain any account information. It contains a confirmation number, payment amount, application identifier, and result data.*

4. **OPTIONAL - Customer Access:** The customers will be required to authenticate themselves by entering a unique User ID and Password to access their information stored on the CES. The User ID and Password cannot be passed from the business application. The customer will be prompted up to three (3) times to enter their unique User ID and Password. The Contractor’s system will present the web pages, appropriate messaging, Frequently Asked Questions, and on-line help to facilitate this process for the customer. The CES must comply with State of Michigan security standards (See 1.104, C. Security Control Requirements), especially as they relate to password update frequency. The CES must be capable of securely storing the Enrollment ID and encrypted Password for individual or business customers.

**Contractor’s Response to Requirement:**

*First Data Government Solutions’ Enrollment solution requires users to create unique user id’s and passwords during the enrollment process. Users are presented with up to three attempts to enter their user id and password rejecting access to enter the site. If this occurs as part of a payment request from a State application users are redirected to the State site with result information indicating they failed to authenticate.*

*Online user documentation and FAQ information are presented in the header of our web interface on all screens within the Enrollment site.*

*All sensitive data such as accounts and passwords are fully encrypted within the PayPoint database.*

5. **OPTIONAL - Customer Notification:** The CES must be capable of sending an email notification to a customer 30 days in advance of their credit/debit (pin-less) card expiration date.

**Contractor’s Response to Requirement:**

*First Data Government Solutions provides a notification system capable of looking for expiration dates due to expire within 30 days and sends an email to the email address on the enrollment informing them of the expiration. We request they visit the enrollment link in the email to update their account information. In addition users making payments using stored accounts on their enrollment are prompted for updated information if it determines the expiration date is beyond its current date.*



6. **OPTIONAL - Inactive Accounts:** The CES will automatically delete/purge customers account information if there is inactivity for more than 18 months.

Does you presently meet these requirements?    Yes    **X** No

**Contractor’s Response to Requirement:**

*First Data Government Solutions’ Enrollment solution provides a housekeeping process that purges expired accounts from the system based on 18 months of inactivity.*

7. **Security:** The Contractor will ensure that financial data transmitted over the Internet will be encrypted using a minimum of 128-bit Secure Socket Layer (SSL) encryption. A minimum of 128-bit encryption will be used for storage of confidential information. In addition, all sensitive data such as passwords and account numbers will be encrypted within our backend database using 128-bit AES compliant encryption.
8. **OPTIONAL - Support:** The Contractor will assist customers with User ID and password issues. The system must accommodate a 2-hour deadline for reset of customer passwords.

**Contractor’s Response to Requirement:**

*First Data Government Solutions will provide phone support for assisting customers in user id and password issues. Support/Administrative staff will utilize enrollment management features to find enrollments in question. Consumers will need to provide details such as address, phone number or other data to verify their enrollment before changes to id’s or passwords will be made by support staff. In addition we will have the ability to assign a temporary password and force the user to change the password on their next entry after entering the temporary password.*

9. **Agency Access:** The Contractor's system must allow agency staff, with the appropriate access rights, to view enrollment information and all payments generated from the customer’s Enrollment ID. All credit card numbers and account numbers will be truncated. Only the last four (4) digits of the account number will be displayed.
10. **OPTIONAL - Batch Enrollments:** The Contractor will provide a batch interface process to allow for submission of a batch of customer data to create enrolled accounts. The process will include an initial edit of account data such as validating the RTN for ACH accounts and ensuring the credit card expiration date is valid. After assigning an Enrollment ID to each valid customer in the batch, the Contractor will provide a feedback file to the submitting agency application. The feedback file will contain the original customer data with the account number truncated so only the last four (4) digits are displayed along with the newly assigned Enrollment ID.

**Contractor’s Response to Requirement:**

*First Data Government Solutions is willing to implement batch enrollment capabilities however not enough detail is provided on the mechanics of this to properly provide details on how it would be implemented. The enrollment system described in this section is based on having users present when payments and/or enrollments are made so that they have complete control over authenticating and managing their accounts. Our solution would have to provide unique enrollment id’s back to the State’s application in order for them to provide batch data that could be uniquely matched to a consumer enrollment for the purpose of sending a batch. Details of this implementation can be defined in our design phase with the State.*



### 11. Notification of Change (NOCs) and Returns:

- a. The Contractor is responsible for updating ACH account information prior to initiating a live transaction when an NOC is received for an enrolled account. When a Return is received, the Contractor will reinitiate returns for non-sufficient or uncollected funds (NSF) transactions if the agency application has selected a reinitiating option at set up.
- b. **OPTIONAL** - If the return is not eligible for reinitiating or the reinitiated entries fail, the Contractor will disable the enrolled account so it cannot be used for future transactions until the cause of the return has been resolved. State employees, with appropriate access, must be able to override the inactivation.

#### Contractor's Response to Requirement:

*Our PayPoint fully supports management of NOCs. We also fully support re-initiating payments up to two additional times, which is configurable by each application. We will need to add support to the new Enrollment functionality described here to automatically disable enrolled accounts. Our Administrative Enrollment web will provide the capability for State employees to re-enable accounts.*

### 12. Migration Assistance:

- a. The Contractor is the incumbent processor and therefore Contractor will not be migrating data from the existing system.
- b. **Scheduled Payments:** The Contractor must provide the capability for enrolled customers to schedule recurring payments. The identical payment amount will be initiated on a certain specified day at specified intervals. The Contractor's system must allow for daily, weekly, monthly, quarterly, and semi-annual intervals. The Contractor will clearly communicate the impact that weekends and holidays have on scheduled payments and what the customer can expect.

The following tasks relate to Scheduled Payments:

1. **Agency Access:** The Contractor's system must allow agency staff, with the appropriate access rights, to view scheduled payment information and all scheduled payments generated from all the customer's Enrollment ID's for that agency. All credit card numbers and account numbers will be truncated. Agency staff must have the ability to reactivate accounts.
2. **OPTIONAL - Update and Cancel:** The Contractor's system must allow the customer to access their scheduled payments through the Enrollment access processes using a User ID and Password and update or cancel scheduled payments prior to the transaction being picked up for settlement. Deadlines and timeframes for customers to update or cancel scheduled transactions will be clearly communicated by the Contractor to the customers during scheduled payment set up.

#### Contractor's Response to Requirement:

*First Data Government Solutions will provide Consumer Enrollment management features through its Consumer Enrollment site that will allow Consumers to update and/or cancel post-dated payments or recurring schedules. Users will be clearly notified of the affect of such actions. Rules will exist to stop these actions on payments, which are about or have already gone through submission.*



- c. **Future Dated Payments:** The Contractor's system will allow customers to assign future dates to ACH debit transactions. The Contractor's system will warehouse the transaction until the appropriate date then automatically pick up and process the transaction for payment.

The following tasks are related to Future Dated Payments:

1. **Warehouse Limits:** The Contractor's system will limit warehousing of payment transactions to 365 days.
2. **Email Notification:** The Contractor's system will generate email notification to both the agency application staff and the customer if a future dated transaction fails the RTN validation when submitted for settlement. The email will inform both parties that the transaction failed and needs to be corrected or other alternative payment methods must be used.
3. **ACH Only:** The Contractor will limit future dated payments to ACH debit transactions only. No future dated credit cards will be accepted at this time. However, future dated credit cards may be allowed in the future.

## C. SECURITY CONTROL REQUIREMENTS

On award of the contract, the Contractor shall comply with State and Federal statutory and regulatory requirements, and rules; Payment Card Industry (PCI) Standards; all other industry specific standards; National Institute of Standards and Technology (NIST) publications; Control Objectives for Information and Related Technology (COBIT); national security best practices.

On award of the contract, the Contractor becomes fully responsible for meeting all requirements herein. There are no implied exceptions or exemptions to these requirements. On the award of contract, the Contractor shall provide documented policies and guidelines governing each security control requirement. The Contractor's response will be subject to review by the Departments of Information Technology's Office of Enterprise Security and Treasury's Office of Security.

The Contractor must perform annual testing of all security control requirements to determine they are working as intended. Annual certification must be provided in writing to the Project Manager or designee in the form of a SAS70 report. Additionally, PCI compliance must be reported quarterly. **The final Project Plan must incorporate the SAS70 and PCI compliance report into the task list.**

### C1. Management Controls

#### A.) Security Risk Assessment

The assessment of potential risks and the type of risk (personnel, equipment, customer, logistics, or organization) are imperative throughout the project. The security risk assessment is a tool used by the State of Michigan, Departments of Information Technology and Treasury to identify risks and determine mitigation strategies to reduce that risk or completely eliminate it. Controls should be based on the potential risks.

1. The Contractor will be required to conduct assessments of risks and magnitude of harm that could result from unauthorized access, use, disclosure, disruption, modification, or destruction of information and information systems that support the operations and assets of the state. The Contractor shall ensure that reassessments occur whenever there are significant modifications to the information system and that risk assessment information is updated.



2. The Contractor must have a documented risk assessment policy and procedure. The policies and procedures must be consistent with applicable state and federal laws, directives, policies, regulations, standards, and guidance. Contractor will follow the Security Assessment Center Methodology defined in Section IV of the **SAS70 Security Audit (Attachment 1)**. This is the methodology that is followed when conducting tests to certify changes and additions that are made to the Contractor's environment.

**B.) System Life Cycle Management**

System Life Cycle Management is the process of evaluating and monitoring the project management processes that exist for a given project and ensuring that the stated process conforms to the project plan. It is important that the life cycle of the project, product or service is managed throughout the sequential phases, which include initiation, development/acquisition, implementation, operation, and disposal.

1. The Contractor is required to review the security controls in every phase of the system life cycle and report to the Project Manager or designee the results of the review. Contractor regularly conducts audits of the entire development process. Sarbanes-Oxley and SAS70 audits review projects on an annual basis and ensure they are following the specified process. An SQA team was also created following a CMM audit. The SQA Team's responsibility is it to ensure the process is being followed, and actively improve the process.

**C.) System Security Certification**

It is imperative that the system has security certification. It is used to determine the extent to which the security controls in the information system are implemented correctly, operating as intended, and producing the desired outcome with respect to meeting the security requirements for the system. This shall address the specific actions taken or planned to correct deficiencies in the security controls and to reduce or eliminate known vulnerabilities in the information system. The Project Manager or designee will have the information needed from the security certification to determine the risk to State's operations, assets, or individuals; and will be able to render an appropriate security accreditation decision for the information system.

1. The Contractor shall provide a security certification report that addresses the adequacy of the security controls implemented or planned upon award of the contract and when major modifications or changes occur that could affect the integrity of the environment such as new applications, servers, firewalls or other networking changes require assessment and approval by The FDC Security Assessment Center. See the Security Assessment Center Methodology defined in Section IV of the **SAS70 Security Audit (Attachment 1)**.

**D.) System Security Accreditation and Assurance**

In order to assure that the remaining known information system vulnerabilities pose an acceptable level of risk to the State's operations, the system accreditation decisions and documentation must be completed. The residual security threats identified must be acceptable to Michigan's Office of Enterprise Security and the Michigan Department of Treasury. The Project Manager or authorized designee will have 1) authorization to operate the information system; 2) an interim authorization to operate the information system created by the Contractor; or 3) denial of authorization to operate the information system. Completing a security accreditation ensures that an information system will be operated with appropriate management review.

1. Upon award of the contract, the Contractor shall furnish to the Project Manager or designee, a formal documented accreditation policy and procedures that address purpose, scope, roles, responsibilities, and compliance.
2. Upon award of the contract, the Contractor shall perform a security control test and evaluation to demonstrate that the management, operational and technical security controls are implemented



correctly and are effective The Contractor will provide a copy of the test results and evaluation to the Project Manager or designee.

**E.) System Security Plan**

The Contractor shall develop and implement a security plan, if a plan does not currently exist, for the information system that provides an overview of the security requirements for the system and a description of the security controls in place or planned for meeting those requirements. The security plan must be reviewed periodically and revised to address system/organizational changes or problems identified during security plan implementation or security control assessments.

1. Upon award of the contract, provide a formal system security plan policy and system security plan to the Project Manager or designee. The Contractor will provide a copy of the plan each time the plan is modified or at least every three (3) years. (A security plan is in place through the FDC Security Assessment Center. A copy of the current security methodology is included in **(Attachment 1)**).

**F.) Acquisition**

The Contractor must include required security controls either explicitly or by reference in information system acquisition contracts based on an assessment of risk. Any subcontractor must comply with State and Federal statutory and regulatory requirements and rules; Payment Card Industry (PCI) Standards; all other industry specific standards; National Institute of Standards and Technology (NIST) publications; Control Objectives for Information and Related Technology (COBIT); and national security best practices. The Contractor shall provide a formal documented system and service acquisition policy that addresses purpose, scope, roles, responsibilities, and compliance; and formal documented procedures to facilitate the implementation.

**Contractor’s System Presently Meets these Requirements**

**Contractors Response to this Requirement:**

*<sup>1</sup>The Information Technology Audit Team uses the COBIT model from the IT Governance Institute to:*

- (1) Assess technology and related business risks,*
- (2) Plan procedures,*
- (3) Execute the procedures, and*
- (4) Assess the results of audit procedures.*

*The COBIT model is augmented with guidance from:*

- (1) The ‘Federal Financial Institutions Examination Council’s IT Examination Handbook’,*
- (2) Regulations promulgated by the Securities and Exchange Commission, Office of the Comptroller of the Currency, Office of Thrift Supervision, etc.,*
- (3) Regulations promulgated by card associations and companies,*
- (4) Standards promulgated by the International Organization for Standardization (ISO), and*
- (5) Guidance from other professional and industry organizations.*

**G.) Security Performance Reporting**

The Contractor will be required to supply monthly reports that reflect system performance including average response times, number and duration of outage events, erroneous transactions, and other information required to monitor the performance of the system. The details and timing of the reports will be determined during implementation.

**H.) SAS 70 and PCI Reports**



1. The Contractor will supply annual SAS 70 audits and quarterly PCI reports to the Project Manager or designee.
2. PCI reports will also be required from each applicable subcontractor.
3. The Contractor will be responsible for obtaining SAS 70 reports or use other tools that document management assurance of internal controls for subcontractors. These reports will be submitted to the Project Manager or designee.
4. Any areas of weakness will require follow-up of Contractor and/or subcontractor and reporting of corrective action plans and completion of those plans to the Project Manager or designee.

## C2. Operational Controls

Operational Controls include those policies, procedures and instructions in place to minimize potential adverse impact on the State of Michigan's information or an information system processing, storing, and/or transmitting confidential or sensitive information or information processed, stored, and/or transmitted on behalf of the State.

### A.) Personnel Security

The Contractor shall provide a formal, documented personnel security policy that addresses purpose, scope, roles, responsibilities, and compliance; and formal documented procedures to facilitate the implementation of the personnel security policy and associated personnel security controls. The Contractor is required to define the job responsibilities, determine the sensitivity of the position by designating a risk to all positions and establish screening criteria for individuals filling those positions. Once a position has been broadly defined, the Contractor shall determine the type of computer access needed for the position and screen individuals requiring access before authorizing access. All contractual employees and their third-party service providers will be required to complete State of Michigan's Nondisclosure Agreements (Form DIT-0049 available at [http://www.michigan.gov/documents/DIT-0049\\_66972\\_7.dot](http://www.michigan.gov/documents/DIT-0049_66972_7.dot)) and Acceptable Use Policy (See Policy at <http://www.michigan.gov/ditservice/0,1607,7-179-25781-73760--,00.html>) upon award of the contract. Also see Section 2.054.

In addition, the Contractor shall review, modify or terminate information system/facilities access authorization when individuals are reassigned, transferred to other positions or vacate positions, and initiate appropriate actions (e.g., reissuing keys, identification cards, building passes; closing old accounts and establishing new accounts; and changing information system access authorization).

Upon award of the contract, provide formal documented personnel security policy and procedures.

### B.) User Access Administration

Upon award of the contract, the Contractor shall provide a formal, documented, access control policy that addresses purpose, scope, roles, responsibilities, and compliance; and formal, documented procedures to facilitate the implementation of the access control policy and associated access controls. Access to confidential or sensitive information shall be based on a valid need-to know that is determined by assigned official duties and satisfying all personnel security criteria and intended system usage.

1. The Contractor shall periodically verify the legitimacy of user accounts and access authorizations and timely modify, suspend or remove access for employees who are reassigned, promoted, on a leave of absence, or terminated.
2. The Contractor shall provide User Access Reports in an electronic format that identifies at least the following information:
  - a.) User Name
  - b.) User Identification Code
  - c.) See Below: User Department



- d.) See Below: Application Name(s)
- e.) Access Rights

The State can expect the following functionality to be available by 7/31/2007.

- c.) User Department
- d.) Application Name(s)

This report will contain all agencies (departments) and applications associated with an individual user.

**C.) Security Awareness and Training**

The Contractor shall ensure that individuals with significant information system security roles and responsibilities have appropriate system security training and all users (including program and project managers) are exposed to basic information system security awareness materials before authorizing access to the State of Michigan's information and information system. The information system security training plan must be documented and monitored.

- a.) The Contractor shall develop, disseminate and periodically review/update: (i) a formal documented security awareness and training policy that addresses purpose, scope, roles, responsibilities, and compliance; and (ii) formal documented procedures to facilitate the implementation of the security awareness and training policy and associated security awareness and training controls.
- b.) Upon award of the contract, provide security awareness and training policy and procedures.

**D.) Business Continuity and Disaster Recovery Planning**

The Contractor and its third-party service providers who maintain State applications and systems supporting critical business operations, processes, applications, and systems shall:

1. Contractors primary data center will be located in Denver, Colorado and the hot disaster recovery (DR) data center is in Omaha, Nebraska. The Omaha DR site is a hot site, and applications are rolled to the DR site by manually rolling the Domain Name System (DNS). Rolling the DNS means that the IP address that is used to resolve the URLs are changed to point from the active servers (Denver) to the IP addresses of the servers in the DR site (Omaha). The applications will become active in the DR site after the DNS is rolled because the DR site is a hot site it is always running.

First Data Government Solutions runs on the DR site multiple times per year to test the effectiveness of the DR site. All planned rolls will be coordinated with all clients to ensure they are aware of the change.

The Web Farm Troubleshooting guide provides a decision tree for actions that should be taken in case of a system outage. If an application is down a Severity 1 ticket is created, and pages are sent to the on-call support team in First Data Government Solutions and FDT. A bridge call is established so the problem can be investigated, were the various groups following the trouble-shooting guide. If the service cannot be restored within 45 minutes the Manager on-call can decide to roll all of the applications to the DR site. First Data Government Solutions runs on the DR site at least twice a year in planned events

2. Develop and implement business continuity and disaster recovery plans and procedures addressing contingency roles, responsibilities and activities associated with restoring system after a disruption or failure.
3. Test each plan periodically to determine the plan's effectiveness and the organization's readiness to execute the plan. The plan should be reviewed at least annually and revised to address system/organizational changes. Also see Section 2.203.

**E.) Backup and Recovery**

The Contractor shall:

1. Backup confidential or sensitive information and store it at appropriately secured facilities, on-site and off-site and ensure prompt restoration.
2. Confidential and Sensitive backup information that needs to be stored is encrypted in the database, and obfuscated when displayed to all users of the application. Data is replicated in real time to the DR facility.
3. Develop, disseminate and periodically review/update formal documented procedures to facilitate full recovery and reconstitution of the information system.
4. Upon award of the contract, provide backup and recovery procedures.

**F.) Security Incident Handling**

Computer security incidents can result from a computer virus, other malicious code, a system intruder either an insider or an outsider, system failures, denial of service or breaches of confidentiality. Contractor's intrusion detection group will utilize tools, and actively monitors for detection into the Contractor's environment 24x7. Contractor will evaluate the Microsoft and other vendor hot fixes on a monthly basis. If it is determined the hot fix is addressing a legitimate security issue the patches are applied first to the QA environment, and then moved to Production.

1. The Contractor shall develop, document, and update an Incident Response policy and procedures for detecting, reporting, and responding to security incidents.
2. The Contractor shall track and document information system security incidents, the corrective action taken and any recommendation to prevent such incidents.
3. The Project Manager must be immediately informed of all security incidents. When feasible, decisions on how to handle the issues should include input from the Project Manager or designee.

**G.) Physical and Environmental Security**

The Contractor shall establish physical and environmental security controls to protect systems, the related supporting infrastructure and facilities against threats associated with their physical environment. Physical Security will be handled through Contractor's Corporate Security group. Details of this can be found on pages 12-14 of the **SAS70 Security Audit (Attachment 1)**.

1. The Contractor shall establish environmental protection for magnetic and other media from fire, temperature, liquids, magnetism, smoke, and dust.
2. The Contractor shall control all physical access points to facilities containing information systems (except those areas within the facilities officially designated as publicly accessible), review physical security logs periodically, investigate security violations or suspicious physical access activities, and initiate remedial actions.
3. The Contractor shall periodically review the established physical and environmental security controls to ensure that they are working as intended.
4. The Contractor is required to provide formal, documented, physical and environmental protection policy that addresses purpose, scope, roles, responsibilities, and compliance; and formal documented procedures to facilitate the implementation of the physical and environmental protection policy and associated physical and environmental protection controls.
5. Upon award of the contract, provide associated policies and procedures.

**H.) Configuration Management**

1. The Contractor shall develop, document, and maintain a current baseline configuration of the information system and an inventory of the system's components.
2. The Contractor shall develop and implement formal change control procedures, configure the security setting to the most restrictive mode, configure the information system to provide only essential capabilities and prohibit default functions and services, document and audit



- configurations and settings, and maintain audit logs for all access to operational program source and object libraries.
3. The Contractor shall provide a formal documented configuration management policy that addresses purpose, scope, roles, responsibilities, and compliance; and formal documented procedures to facilitate the implementation of the configuration management policy and associated configuration management controls.
  4. Upon award of the contract, provide current configuration management policy and associated configuration management controls.

I.) **Media Protection**

1. The Contractor shall implement a variety of measures to provide physical and environmental protection and accountability for tapes, diskettes, printouts, and other media containing confidential or sensitive information to prevent the loss of confidentiality, integrity, or availability of information including data or software, when stored outside the system. This can include storage of information before it is input to the system and after it is output.
2. The Contractor shall ensure that only authorized users have access to information in printed form or on digital media removed from the information system, physically control and securely store information media, both paper and digital, restrict the pickup, receipt, transfer, and delivery of such media to authorized personnel.

J.) **Media Destruction and Disposal**

1. The Contractor shall sanitize or destroy information system digital media and printouts containing confidential or sensitive information before its disposal or release for reuse to prevent unauthorized individuals from gaining access to and using information contained on the media.
2. The Contractor must sanitize information system digital media using approved equipment, techniques and procedures; track, document and verify media sanitization actions; and provide certification attesting that confidential or sensitive data has been removed from digital media before disposing or releasing for reuse.
3. The Contractor shall provide a formal documented media protection policy that addresses purpose, scope, roles and responsibilities, and compliance; and formal, documented procedures to facilitate the implementation of the policy and controls upon award of the contract.
4. Provide associated policies and procedures to the Project Manager or designee upon award of the contract.

K.) **System Security: Methodology defined in the provided SAS70 Security Audit (Attachment 1).**

1. The Contractor shall develop and implement a security plan for the information system that provides an overview of the security requirements for the system and a description of the security controls in place or planned for meeting those requirements.
2. The Contractor shall periodically test and evaluate the effectiveness of information security policies, procedures, and practices performed with a frequency depending on risk that includes testing of management, operational, and technical controls for every critical information system.
3. Upon award of the contract, provide information system security policies and procedures.

L.) **Data Security**

Describe how the State of Michigan customer's personal and financial information will be protected from unauthorized use and theft addressing each of the issues below.

1. The Contractor will serve as the custodian of State of Michigan confidential or sensitive information and shall comply with State and Federal statutory and regulatory requirements and rules; Payment Card Industry (PCI) Standards; all other industry specific standards;



- National Institute of Standards and Technology (NIST) publications; Control Objectives for Information and Related Technology (COBIT); and national security best practices regarding protection of confidentiality, integrity, and availability of confidential or sensitive data. Confidential or sensitive data includes but is not limited to customer's personal and financial information, such as Social Security Numbers, credit card numbers, bank account numbers, name, address etc.
2. The Contractor shall provide security protecting the customer's personal and financial information from unauthorized use and theft. Customer's financial information is of high sensitivity and high security level.
  3. The Contractor shall provide secure and acceptable methods of transmitting State of Michigan confidential or sensitive information over telecommunication devices such as data encryption, Secure Socket Layer (SSL), dedicated leased line or Virtual Private Network (VPN).
  4. The Contractor must use data encryption techniques whenever data is transmitted to and from a remote site with the exception of the dedicated leased line.

#### M.) **Information System Maintenance**

System maintenance requires either physical or logical access to the system. Support and operations staff or third-party service providers may maintain a system. Maintenance may be performed on site, or it may be necessary to move equipment to a repair site. Maintenance may also be performed remotely via communications connections.

1. The Contractor shall take additional precautions, such as conducting background investigations of service personnel, supervising system maintenance personnel, authenticating the maintenance provider using call-back confirmation, encrypting and decrypting diagnostic communications; using strong identification and authentication techniques, such as tokens; and using remote disconnect verification.
2. The Contractor shall provide a formal documented information system maintenance policy that addresses purpose, scope, roles, responsibilities, and compliance; and formal, documented procedures to facilitate the implementation of the information system maintenance policy and associated controls to the Project Manager or designee upon award of the contract.

#### C3. **Payment Card Industry (PCI) Data Security**

Contractors with access to credit/debit card cardholder data must adhere to the Payment Card Industry (PCI) Data Security requirements. Information about the Payment Card Industry (PCI) Data Security Standards can be found at <https://www.pcisecuritystandards.org>.

1. Contractor acknowledges that they are responsible for security of cardholder data in their possession.
2. Contractor acknowledges and agrees that data can ONLY be used for assisting the State in completing a transaction, supporting a loyalty program, supporting the State, providing fraud control services, or for other uses specifically required by law.
3. Contractor agrees to provide business continuity in the event of a major disruption, disaster or failure.
4. In the event of a security intrusion, the Contractor agrees the Payment Card Industry representative, or a Payment Card Industry approved third party, will be provided with full cooperation and access to conduct a thorough security review. The review will validate compliance with the Payment Card Industry Data Security Standard for protecting cardholder data.



5. Contractor agrees to properly dispose sensitive cardholder data when no longer needed.
6. Contractor will continue to treat cardholder data as confidential upon contract termination.
7. The Contractor will contact the Michigan Department of Treasury immediately to advise them of any breaches in security where card data has been compromised.
8. The Contractor will provide the Michigan Department of Treasury documentation showing (PCI) Data Security certification has been achieved.
9. The Contractor will advise the Michigan Department of Treasury of all failures to comply with the PCI Data Security Requirements. Failures include, but are not limited to system scans and self-assessment questionnaires. The Contractor will provide a time line for corrective action.

#### **C4. Security User Monitoring Reports**

The Contractor shall have effectively implemented audit logs that assist in selecting pertinent information to create monitoring reports. The audit log fields include but are not limited to:

User Name  
 User Identification Code  
 User Department  
 Application Name  
 User Role  
 Action taken  
 Date and time of action  
 Before and after information

The Contractor must generate security audit reports in electronic format.

This functionality will be available by July 31, 2007. This report will contain all agencies (departments) and applications associated with an individual user.

#### **C5. Technical Controls**

Technical controls include those policies, procedures and instructions in place that focus on security controls that the computer system executes. The controls must provide automated protection from unauthorized access or misuse, facilitate detection of security violations, and support security requirements for applications and data.

##### **A.) Identification and Authentication**

Identification and authentication is a technical measure that prevents unauthorized people or unauthorized processes from entering an IT system. The system must be able to identify and differentiate users.

Identification is the means by which a user provides a claimed identity to the system.

1. Upon award of the contract, provide policies and procedures to the Project Manager or designee.

##### **B.) Authentication**

Authentication is the means of establishing the validity of a user's claimed identity to the system. All users including an application or system must have a unique identifier and authenticator (e.g., password, etc.). Passwords are a primary means to control access to a system. The information system must allow users to select and employ strong passwords to prevent compromise of confidential or sensitive information.



1. Upon award of the contract provide password policy and procedures to the Project Manager or designee.

C.) **Access Control**

Access controls are put in place to authorize or restrict the activities of users and system personnel within the application. Access to the State's information and information systems will be based on each user's access privileges. Access privileges shall be granted on the basis of specific business need (i.e., a "need to know" basis). Hardware and software features shall be designed to permit only authorized access to or within the application, to restrict users to authorized transactions and functions, and detect unauthorized activities. The Contractor shall ensure that even legitimate users cannot access stored information unless they are authorized to do so.

1. Upon award of the contract, provide access control policies and procedures to the Project Manager or designee.

D.) **Audit Trails**

Audit trails maintain a record of system activity by system or application processes and by user activity. In conjunction with appropriate tools and procedures, audit trails provide a means to help accomplish several security related objectives including individual accountability, reconstruction of events, intrusion detection, and problem identification. The Contractor will be required to maintain logs of operational activities (audit trails) involving State of Michigan information systems and services. Logs should be securely stored and subject to regular, independent reviews.

E.) **System and Communications Protection**

System and communications, if not properly protected, may result in a compromise of all connected systems and the data they store, process, or transmit. The Contractor shall restrict the ability of users to launch various types of denial of service attacks, e.g., viruses, worms, Trojans, etc. Contractor's Intrusion Detection groups will actively monitor and prohibit the service attacks from entering into the Contractor's. Intrusion Detection software will be deployed and monitored across the environment. Executables will be filtered out before entering the Contractor's email or infrastructure.

1. The Contractor must have a formal documented, system and communication protection policy and formal, documented procedures to facilitate the implementation of the system. The policies and procedures shall be consistent with applicable state and federal laws, directives, policies, regulations, standards, and guidance.
2. Upon award of the contract, provide associated policies and procedures to the Project Manager or designee.

F.) **Integrity Control**

The Contractor shall provide integrity controls to protect the operating system, application, and information in the system from accidental or malicious alteration or destruction and to provide assurance to the user that the information meets expectations about its quality and that it has not been altered.

G.) **Change Control**

1. The Contractor shall make only changes authorized and approved by the Contract Administrator or designee, maintain strict control over access to program source libraries; separate development, testing and operational environments to enforce an adequate segregation of duties between developers, testers and operations staff; monitor changes to the information system; and conduct a security impact analysis to determine the effects of the changes.
2. The Change Control Procedures are provided in **Attachment 2**. Upon award of the contract, the Contractor shall provide a formal, documented, change control policy that addresses



purpose, scope, roles, responsibilities, and compliance; and formal documented procedures to facilitate the implementation of the change control policy and associated change controls to the Project Manager or designee.

#### H.) **Network Security**

The Contractor is responsible for the security of and access to the State's information. Unsecured operating practices, which expose other connected State networks to malicious security violations, are not acceptable. The Contractor:

1. And its subcontractors must follow the State of Michigan, Department of Information Technology's Firewall Access Policy provisions if those servers require data or transactions that must pass through the State's secure firewall perimeter. This Policy will be available to the Contractor upon award of the contract, after completing and submitting form DIT0049, Non Disclosure Agreement to the Project Manager or designee.
2. Must coordinate with the Department of Information Technology, Network Operations Center (NOC) to enter the proper pointers into the State Domain Name System (DNS) for identifying and locating their Intranet and Internet servers.
3. Must provide network security policies and procedures to the Project Manager or designee upon award of the contract.

#### I.) **Web Application Security**

The Contractor shall establish adequate security controls for web application(s) to provide a high level of security to protect confidentiality of data transmitted over the public Internet. At no point will the data be unsecured in transit. The controls include, but are not limited to:

- a.) Authentication
- b.) Authorization and access control
- c.) Web application and server configuration (e.g., patch management, deletion of unnecessary services, separation of the operating system and the web server)
- d.) Session management (e.g., randomly generated unique session IDs, session encryption, time-out setting for inactive session)
- e.) Input validation (e.g., avoid shell commands, system calls, and malicious codes),
- f.) Encryption (e.g., protect confidential or sensitive information, encryption keys, passwords, shared secret),
- g.) Audit logs (e.g., all authentication and authorization events, logging in, logging out, failed logins).As the incumbent vendor and the source of the current API structure our solution already meets this requirement. VPN, Frame Relay, SSH, SSL and data encryption are all currently in place and utilized when transmitting data from point to point in the current application. At no point is the data unsecured in transit.

### D. **SYSTEM PERFORMANCE AND TECHNICAL REQUIREMENTS**

**D1. High Availability:** The Contractor must provide a system that is available 7 days a week, 24 hours per day. The Contractor will meet the Service Level Objective of 99.9% system availability. This equates to less than 0.75 (point 75) hours of outage per calendar month, subject to the exclusions set forth in the exclusions below.

Outages caused by any of the following will be excluded for purposes of determining service level:

- a.) Periods of scheduled or emergency maintenance activities or a scheduled outage;
- b.) Problems with the State's site content or the State's programming errors;
- c.) Problems caused by systems administration, commands, or file transfers performed by the State's representatives;
- d.) Interruptions in third party networks that prevent users of the Internet from accessing the State Web site;



- e.) Other activities the State directs, denial of service attacks, natural disasters, changes resulting from government, political, or other regulatory actions or court orders, strikes or labor disputes, acts of civil disobedience, acts of war, acts against parties (including carriers and the Contractor's other contractors), and other force majeure events;
- f.) Lack of availability or untimely response by the State to incidents that require the State's participation for problem source identification and/or resolution; and
- g.) The State's breach of its obligations under this Statement of Work.

When the accumulated monthly outage exceeds 0.75 (point 75) hours of outage per calendar month, the Contractor is subject to Monetary Assessments as defined in section **Article 1, Attachment F**.

- D2. **System Maintenance:** The maintenance window designated for the Contractor to perform system maintenance is from 2:00 a.m. – 5:00 a.m. EST each Thursday. The Contractor will notify the Project Manager or designee fourteen (14) business days in advance when system maintenance will be performed including details surrounding the maintenance and its real and potential impact on the system and State processing.
- A.) **Revert to Last Best Version:** When the Contractor maintenance includes implementation of a new software version of any component, there must a procedure in place to revert to the last best version of that component when the upgrade is unacceptable. If upgrade is problematic, the Configuration Management Team will roll back the code package and restores to the previous version of PayPoint in both Denver and Omaha Data Centers.
  - B.) **Emergency Maintenance:** When the Contractor performs emergency maintenance there must be full disclosure to the State. Contractor will provide the patch or hot fix names as well as the technical details for the patch. The maintenance must not proceed until there is agreement between the Contractor and the State on how maintenance shall proceed including but not limited to the utilization of the Contractor's backup site. The Contractor will not proceed without agreement from the State. The exception is in cases of high-risk security issues; therefore the changes need to be made before receiving approval from the State.
- D3. **Vital Payment Processing Connectivity:** The Contractor must use a connectivity solution that obtains the lowest authorization cost with the State's credit card acquirer, Nova Information Systems. The Contractor will utilize a Frame Relay connection to Vital. The Contractor is responsible for all costs associated with installation and ongoing maintenance of the connection.
- A.) **Transaction Switch:** The contractor will utilize a Direct Connection module to Vital processing within PayPoint.
  - B.) **Server-level Logs:** The Contractor must have the ability to maintain an electronic server-level log of all transactions to and from its credit card processor.
- D4. **System Response Time:** Based on the activity level described in the contract, the server complex dedicated to the payment system will provide an average monthly response time of three (3) seconds or less from the point at which the inquiry hits the server complex to the point at which the server complex responds with the requested web page. This performance and responsiveness is based on the following assumptions:
- The response time excludes any ISP backbone-related availability or performance latency problems in the connectivity between the Contractor and the State. The calculation of metrics related to the server complex's ability to support the daily hit rate will be based upon response times internal to the hosting facility.
  - The Contractor will use the appropriate tools to monitor server-hit rates, concurrent user sessions and response time within the hosting environment.



- Since response time is, to a large degree, a function of application architecture, the State will work with the Contractor to optimize the application to assist in meeting the State's expected customer response time.
- This response time objective is subject to a validation by both Contractor and the State.

In the event the server complex is unable to successfully support the above specification and internal response time performance levels for the initial one hundred twenty (120) day period, the Contractor is responsible for re-engineering and upgrading the server complex to meet these performance requirements at no cost to the State. Upon completion of this upgrade to the server complex, the hit rate and internal response time performance window will be re-initiated and will extend for a ninety (90) day period.

**Contractor's System Presently Meets these Requirements**

**Contractors Response to Requirement:**

*The PayPoint system has a response time on average of less than 3 seconds. The processor's architecture is another important factor to consider when you analyze response time. Whether you're processing a credit card authorization, e-check, or pin-based or pin-less debit transaction the PayPoint system sends a request message to these processor entities and waits for a response message. Once Paypoint receives a response message, we immediately update the database and get a response message back out to the State. Typically, we don't have issues with processors performance, However, processor performance can impact the speed of a response message to the State.*

- D5. **Implementation Testing:** Contractor will submit a test plan to the Project Manager or designee that encompasses all systems, processes, and functionality. The test plan will include testing telecommunications lines and connectivity. The State may develop its own test plan to supplement the Contractor's plan. Upon completion of testing the Project Manager or designee will require a signature sign-off from the Contractor, Department of Information Technology (DIT) Project Manager, and other principal test participants.

**Contractor's System Presently Meets these Requirements**

**Contractors Response to Requirement:**

*The State is currently using the PayPoint system provided by First Data Government Solutions. The State has implemented 40+ agency business applications and has nearly 100+ merchant IDs operational in CEPAS today. The State has already validated the features and functionality of the PayPoint system, the Frame Relay connection to Vital Processing, and the VPN Connection between the State and our Denver and Omaha Data Centers. The telecommunication lines have been installed and continue to operate today.*

- D6. **Disaster Recovery / Back Up Site:**

- a.) The Contractor must have a Disaster Recovery Plan that includes a primary and back up site to provide processing continuity. The back up site must be physically separated from the primary site . The back up site (Omaha, Nebraska) must be a functionally complete replica of the primary site (Denver, Colorado), utilizing identical software and hardware settings and values, and will have performance equal to the primary site. The historical customer data must be identical to the primary site. The databases are continuously mirrored between the two sites to prevent loss of data and the telecommunication links to Vital and other processors are installed and operational in Omaha.



- b.) When the Contractor changes site locations it must be transparent to State applications. Planned Disaster Recovery rollovers must be communicated to the State with a seven (7) business day notice. The Contractor is expected to test rolling to its Disaster Recovery site a minimum of once annually.
- c.) When changes in site locations are done to perform maintenance or upgrades on the Primary site, the contractor shall inform the Project Manager what changes/upgrades are occurring.
- d.) The Contractor shall monitor all changes in site events to ensure outcome is as expected. State applications will be monitored to ensure all types of applications are functional, such as WEB, manual key entry, and interfaces.
- e.) Contractor will have a fall back plan in the event that a change in site location causes problems for processing, such as inability for WEB applications to function, etc.

Also see Section 2.203

**D7. Redundant Hardware / Software:** The Contractor is required to maintain adequate back up procedures and equipment in case of system failures to meet availability and response time requirements. If a server device fails, the automated monitoring systems in place shall detect the problem and immediately remove the server from the content switch. This automated system will prevent network traffic from reaching the problem device.

**D8. Application Program Interface (API):** The Contractor must provide APIs to facilitate its payment processing functionality. The Contractor must provide a variety of methods for accessing their services. The APIs shall include but not be limited to:

- a.) Web Services utilizing Extensible Markup Language ( XML), Simple Object Access Protocol (a.k.a. SOAP), Web Services Description Language ( WSDL)
- b.) Secure HTTP
- c.) A web page that may be invoked by a State application that is used solely for making an electronic payment. The page must allow the State application to specify the appearance of some of its attributes including but not limited to the title of the page, page header, page footer, and confirmation text when a successful payment is made.
- d.) A batch interface for transfer of multiple transactions from a State application to the Contractor in a secure manner.
- e.) The Contractor must develop the mapping and interface from the current API structure to the Contractor's API structure.

**D9. Virtual Private Network:** The Contractor must provide Virtual Private Network (VPN) tunnels between the State and its primary and secondary sites. The tunnel at each site must be redundant and must be capable of automated failover to ensure uninterrupted connectivity with the State. Switching between the Contractor's primary and secondary sites must be developed jointly with the telecommunication experts of the Contractor and the State and must comply with State of Michigan Policies, Standards and Procedures as defined in the document titled *State User Gateway-to-Gateway Service Process* located at the following URL:

[http://www.michigan.gov/documents/SoM\\_GW-to-GW\\_ProcessRevisedScrubed\\_123318\\_7.pdf](http://www.michigan.gov/documents/SoM_GW-to-GW_ProcessRevisedScrubed_123318_7.pdf)

**Contractor's System Presently Meets these Requirements**

**Contractor's Response to Requirement:**

**Provisioning** – *First Data Government Solutions uses the Internet so it would not be necessary to provision dedicated circuits. However, on an individual basis we can support VPN connections. We have already done this for the State of Michigan in the past.*

**Protocol** – *First Data Government Solutions creates an IPSEC 3DES tunnel.*



**Failover** – In both our primary Data Center in Denver and our secondary Data Center in Omaha, we have redundant routers. Should a router within either facility fail, the secondary router at that facility will automatically take control. Once the failed router recovers it will then resume its role as the primary router.

D10. **Erroneous Transactions:** Erroneous transactions are those transactions that are successfully processed by the Contractor's system without a response being received by the agency application and customer. This causes the customer to reinitiate the transaction and may result in the customer's account being charged more than once. It may also result in the failure of agency legacy systems to be properly updated for a successful transaction causing reconciliation problems. Some erroneous transactions could be caused by inconsistencies in the time-out values of system hardware/software.

The Contractor Must:

- a.) Have software tools in place to detect trace and prevent erroneous transactions.
- b.) The product must not commit the object of the transaction for settlement or further processing when an erroneous transaction is detected.
- c.) The system must have the ability to provide a response if the connection is lost.

D11. **Processing Logs:** The Contractor system must maintain a log of transaction activity from the time a transaction is received until the time a response is sent to the application. Log data must be provided to the State upon request to assist with problem resolution.

D12. **System Upgrades / Changes:** The Contractor will:

- a.) Notify the Contract Compliance Inspector or designee at least 60 days in advance of when system changes (hardware/software) are planned.
- b.) Provide detailed documentation that describes the changes at least 30 days prior to implementation.
- c.) Will place a testable version of the changes in the Test Environment at least 30 days prior to implementation to allow for agency application testing.
- d.) 30-60 day prior notification may not be possible for third party vendor software and hotfixes.

D13. **Network Architecture:**

Contractor will provide a comprehensive network diagram upon request.

D14. **Test Environments:** The Contractor will:

- a.) Provide access to fully functioning test environments that are a replica of the production environment.
- b.) Ensure transactions processed in the Application Development Test environment will not be processed for settlement.
- c.) Ensure test results for each testing application must be separate from other application test results.
- d.) Provide a separate feedback file that will be generated for transactions processed in the test environment.
- e.) Provide multiple test credit card numbers (for all cards- Visa/MC, Discover, American Express) and bank account numbers to facilitate transaction testing.

The exception is the 30-days prior to a new PayPoint release going into the production environment

A.) **Testing Environments:** The Contractor must make available two individual testing environments for the State's use. These will be referred to as the Applications Development Testing (ADT) environment and a User Acceptance Testing (UAT) environment.

B.) **Application Development Testing Environment (ADT):** This environment will be used if necessary by developers to develop and perform reiterative testing of computer code prior to releasing to UAT. It must replicate the Contractor Production environment while supporting all functions and applications defined in production. This environment must be independent of all other



testing environments and accessible to only those authorized to conduct testing of a State application. The environment must be available during work hours defined as 7:00 a.m. – 5:00 p.m. EST. This environment would be the test mode in the production environment in the current PayPoint system.

C.) **User Acceptance Testing (UAT) Environment:** This environment will be used by the State for testing of products promoted from ADT environment into the UAT environment. It must replicate the Contractor Production environment while supporting all functions and applications defined in production and support end to end testing of credit card authorization, ACH and credit card settlement, and refunds prior to an application being migrated to production. Treasury can provide valid test card and account numbers for this purpose. This environment must be independent of all other testing environments and accessible to only those authorized to conduct UAT testing of a State application. The environment must be available during work hours defined as 7:00 a.m. – 5:00 p.m. EST.

D.) **Repeatable Test Cases in Application Development:** The Contractor must supply a set of at least 6 repeatable test cases that validates the API is properly integrated into an application in the Application Development Test domain. Every function of the Contractor's product must be in the set of test cases. The test cases must be evaluated using pass or fail, yes or no logic. Repeatable test scenarios have been provided in Attachment 8, Merchant Integration Guide.

D15. **Feedback File:** The Contractor will supply a daily feedback file that contains details of the previous day's transactions. This file will be used to update agency legacy systems and as a reconciliation tool. The following tasks relate to the Feedback File:

A.) **Feedback File Contents:**

- a.) The file shall be in a straight or delimited ASCII format.
- b.) The feedback file will not contain sensitive information such as credit card numbers, account numbers, or Social Security Numbers in their complete unaltered form.
- c.) All sensitive information must be truncated.
- d.) The dollar value of the transactions in the feedback file must equal the dollar value of the day's transactions in the settlement batches for each application.
- e.) Refund transactions included in the feedback file must contain enough information to allow for linking the refund back to the original transaction.
- f.) The file must be one file, sub-divided and sorted by agency application.
- g.) To compensate for unexpected service interruptions and common Federal and State holidays, a daily feedback file must be available for five (5) or more calendar days. It must be available in archive for a minimum of 60 calendar days.

B.) **Feedback File Retrieval:** The Contractor shall:

- a.) Make the file available for pick up by 6:00 a.m. EST.
- b.) Ensure pick up shall be accomplished using Secure Shell (a.k.a. SSH), a secure FTP method.
- c.) Maintain the secure FTP server and the State will maintain the secure FTP client.
- d.) Ensure contents of the feedback file are encrypted at 128 bits or better during transfer from the Contractor to the State.
- e.) Inform the State designated contact if the file is unavailable at the agreed time.

D16. **Data Retention:** Transaction data must be retained for a minimum of 24 months for audit and retrieval purposes.

- a.) The Contractor must remain in compliance with Payment Card Industry (PCI) standards as long as the contractor is storing data for the State.

D17. **Transition Assistance:**



- a.) To assist with transition of State customers with enrolled and scheduled accounts, the Contractor will transfer a file in XML format to a location identified by the Project Manager or designee that contains all information related to the customer's enrolled and/or scheduled accounts. The file will contain full credit card numbers, bank account numbers, enrollment Ids, Agency Application IDs, and any other information collected from the customer. A secure process will be utilized to transfer the file. The file will be transferred at an agreed upon time. It is anticipated this will be prior to expiration of the contract and will be part of the migration plan to the new Contractor. If necessary, a second file will be transferred to migrate registrations that have been created since the first file transfer. Timing of the transfer of this file will need to be determined but is expected to be near the completion of the migration to the new Contractor.
- b.) The Contractor will continue to securely store State of Michigan payment data for a period of six (6) months following expiration of the contract. The State will retain all existing payment functionality and be capable of accessing the data through existing methods during this time period. The Contractor will continue to provide the daily feedback file during this period.
- c.) At the end of the six (6) month period, with State of Michigan approval, the Contractor will destroy all stored State of Michigan data and documents that contain sensitive or confidential information. The Contractor will also disable all State of Michigan user access to their system. The Contractor will provide written affirmation on the destruction of sensitive and confidential information to the Project Manager or designee upon destruction of the data. Also see section 2.218.

D18. **Operational Internal Controls:** The Contractor shall ensure that manual and automated systems have sufficient internal controls, including approval processes, to minimize the risk of error. Examples of such controls include:

- a. Ensuring when moving from test to production that only the intended State applications are affected.
- b. Ensuring that technology infrastructure is well documented.
- c. Ensuring that checklists or similar controls are utilized when performing upgrades, system changes, or maintenance.
- d. Ensuring that disaster recovery or redundant sites are configured in the same manner as the primary site.
- e. Ensuring when changes are made or when an outage occurs that all types of connections are working, such as WEB, Manual Entry Screens, Interfaced IVR processes, etc.

D19. **Mapping:** The Contractor must develop the mapping and interface from the current API structure to the Contractor's API structure.

## E. CONTRACTOR SUPPORT

E1. **Dedicated Business and Technical Contacts:**

- a.) The Contractor must provide dedicated business and technical contacts for the term of the contract. Contacts must be available between 8:00 a.m. and 5:00 p.m. EST. Each contact shall have a suitable back up that has equal knowledge and abilities. The Contractor will provide phone numbers and email addresses for the designated contacts and back ups. The business contact will possess thorough knowledge of the Contractor's system functionality and processing capabilities in order to act as a resource and central point-of-contact for business related questions and issues. During regular business hours (8:00 a.m. – 5:00 p.m. EST) system problems will be reported to the business contact.
- b.) The technical contact will support the State's information technology staff. The technical contact will possess thorough knowledge of the Contractor's technical processes, application integration issues, programming parameters, telecommunication issues and other technical issues in order to act as a resource and central point-of-contact for technical questions, problems, and issues.
- c.) In order to document issues and problems, the contacts shall maintain a phone call and issues tracking log. The log will contain dates, problem description, resolution, and other details related to the issue. The log will be made available to the State periodically as requested.



- E2. **24 x 7 Support:** The Contractor must provide 24 hour per day, 7 day a week support. The Contractor will provide a toll-free phone number and pager number to contact the Contractor after-hours support staff. System problems discovered after regular business hours will be reported to the Contractor's after-hours support staff. The Contractor must monitor the system to ensure that transactions are processing as expected. If the Contractor's system experiences unscheduled downtime or other processing issues, the support staff will immediately notify the designated State contact via telephone and follow up with an E-mail.
- E3. **Severity Codes:** The Contractor's support staff will respond to problems in accordance to Severity Codes assigned to the problem by State staff. The Severity Codes and expected response times are detailed below:
- Severity 1 – means a problem that has critical business impact on the State. The service is not usable. The Contractor response time is 30 minutes or less.
  - Severity 2 – means a problem that has a major business impact on the State. Important function or service is not available. The Contractor response time is 2 hours or less.
  - Severity 3 – means a problem that has a minor business impact on the State. The service is not seriously affected. The Contractor response time is 4 hours or less.
  - Severity 4 – means a problem that has no business impact on the State (for example, a question). The Contractor response time is one day or less.
- E4. **System Business Documentation:** The Contractor must provide the State with detailed documentation describing the Contractor's system. Business documentation must include, but is not limited to:
- a.) Accessing the system
  - b.) Pictures of system screens and detailed instructions on how to use them
  - c.) Description of system components
  - d.) Codes and parameters used
  - e.) Reporting functionality
  - f.) Security
  - g.) Instructions for set up of agency applications.
  - h.) Frequently Asked Questions.
  - i.) Descriptions of upgrades
- Contractor will provide the State with a PayPoint User Guide with details on how to use the PayPoint Administration Site. The User Guide provides information on how a User Accesses the system and searches for payments, runs reports, monitors settlement, and Frequently Asked Questions.
- Contractor will provide the State with a PayPoint Merchant Integration Guide with details on how to develop an API, codes and parameters, description of system components, file layouts and etc.
- Contractor will provide the State with a PayPoint Application Form that allows the State to determine the configuration details for the applications. The PayPoint application provides instructions on how to fill out the form and submit it to First Data Government Solutions.
- Contractor will provide the State with Client Release Notes for each release of PayPoint. A new Release includes upgrades to PayPoint. The Client Release Notes provides detail information on the upgrades by providing how it works today, what has changed and Special Instructions.
- E5. **System Technical Documentation:** The technical documentation must describe the system in detail to foster complete technical understanding of the Contractor's product in all its environments and must include:
- a.) **Data Dictionary:** A complete data dictionary must be included describing every data item used in the Contractor's system.



- b.) **Definitions:** Special terminology used in the Contractor's documentation must be defined in a glossary. For example, the term CVV2 is explained as Card Verification Value 2 for Visa.
- c.) **Naming Conventions:** Naming conventions used in the Contractor's system must be thoroughly discussed.
- d.) **Minimum and Recommended Server Configuration:** The Contractor's documentation must specify the minimum and recommended server configuration for implementation and deployment of its system.
- e.) **Required Software Add-ons:** Required software add-ons that enable implementation and deployment of the Contractor's system must be thoroughly discussed. For example, if a secure FTP server is required for communication to the system, the documentation tells the details of what is expected of the State. This includes but is not limited to products sold or distributed by the Contractor or other software providers.
- f.) **Internet Browser Specifications:** Compatibility with specific Internet browsers is discussed thoroughly in the Contractor's documentation.
- g.) **Availability:** The Contractor's technical documentation is available on-demand in an electronic form and media through its web site or other means acceptable to the State.
- h.) **Updates:** When the Contractor plans an update to its system new documentation is available thirty (30) or more days prior to the release and implementation of the update. The new documentation is comprised of two parts. The first is a description of the update and the changes that it affects on the Contractor and State systems. The second is a complete revision of the system documentation manual or manuals.
- i.) **Single Versions:** Contractor documentation is controlled so that there is a single current version at any given time. Documentation is clearly marked with version numbers and effective begin and end dates.
- j.) **Telecommunication Configuration:** Contractor documentation clearly explains the telecommunication specification and protocols required for implementation and deployment of its system by the State.
- k.) **Proprietary Nuances:** The Contractor documentation fully discusses any technical proprietary nuances essential to the implementation and deployment of its system by the State. For example, if data downloads from the Contractor site requires a special version or commercial brand of an FTP server, this is disclosed and discussed.
- l.) **Describes Functions:** Every electronic payment function of the Contractor's system is described in detail. Using the instructions in the documentation, the State developers will be instructed in detail how to build applications to utilize the Contractor's system.
- m.) **Provides Examples:** The Contractor documentation provides computer-programming examples. The examples guide State developers in the effective use of its system.
- n.) **Testing Explained:** The Contractor documentation thoroughly explains how a State developer utilizes the Contractor's test cases in order to test State application development.
- o.) **Web Service:** The Contractor documentation clearly and thoroughly explains its implementation of Web Services including Simple Object Access Protocol (a.k.a. SOAP), Extensible Markup Language (a.k.a. XML), and Web Services Description Language (a.k.a. WSDL).
- p.) **HTTPS:** The Contractor documentation clearly and thoroughly explains its implementation of Secure Hyper Text Transfer Protocol (a.k.a. HTTPS).
- q.) **Web Service and HTTPS URL:** The Contractor documentation clearly names the URL addresses for accessing all its technical environments. The Initial Test, System Test and Acceptance and Production environments are completely discussed.
- r.) **Web Service WSDL:** The Contractor's Web Service WSDL is available on-demand in an electronic form and media through its web site or other means acceptable to the State.
- s.) **Implementation Project Guidelines:** The Contractor documentation includes a section on technical project management that guides State project managers in the initiation, planning, execution, control and closeout of State development efforts.
- t.) **File Layouts:** The Contractor's documentation includes a clear, concise and separate file layout for all files exchanged between the State and the Contractor.
- u.) **Organizational Authorization and Approval Forms:** Any forms required for the executions of development efforts are included in the documentation with explicit directions on their use.
- v.) **Frequently Asked Questions:** Common questions asked by other users of the Contractor's system.



- E6. **Best Practices:** The Contractor will provide a comprehensive discussion of technical best practices to assist agencies in integrating with the Contractor's system. This document shall be available on the Contractor's website. The State will be permitted to link to this website. Contractor will conduct a best practice discussion with each agency.
- E7. **Training:** The Contractor will provide detailed and comprehensive training that covers all aspects of the functionality of the Contractor's system. Training will include handouts and other documents as required. Initially the Contractor will provide a training session(s) to train the Receipts Processing CEPAS Agency Liaisons and management (see section 1.202, State Staff, Roles, and Responsibilities). The Contractor will then provide multiple training sessions to initially train agency users. Once initial training has been accomplished, the State will assume responsibility for subsequent training of basic system functionality.

The Contractor may be required to provide training for extensive system changes/upgrades at the discretion of the Project Manager or designee.

- E8. **Demonstration Web Site and Training Material:** The Contractor will provide access to a Demonstration Web Site or inter-active software and training materials for purposes of demonstrating the Contractor's system functionality to State agencies.
- E9. **CEPAS Incident Reports:** A CEPAS Incident Report is a State form used to document system problems that affect State customers or State agency reconciliation processes and requires attention and resolution by the Contractor. CEPAS Incident Reports are assigned a unique Incident Report Number in the format of YYMMDD representing the date the incident occurred. See a copy of the CEPAS Incident Report form in **Attachment 3 - CEPAS Incident Report**.
- a.) Once the problem is resolved, the Contractor will document its response and action taken by completing Part 3 of the form.
  - b.) The Contractor will maintain and make available a document to summarize the status of all Incident Reports issued by the State. This "Incident Report Summary" will be in the form of a table or spreadsheet and contain relevant information such as Incident Report Number, Date of Incident, Summary of the Problem, Contractor response, Resolution Date, Status (Open, Closed), etc.
  - c.) The Contractor will respond to incident reports within 10 working days.
  - d.) The Contractor business contact will email the updated Incident Reports and Incident Report Matrix to the State and place them in eRoom.
- E10. **New Account Set-Up:** The Contractor must complete set-up of new credit card accounts within 5 business days of request from the State and within 10 business days for E-check.

## F. BANKING

- F1. **ACH Application Deposit Identification:** At agency application set up for ACH debit programs, the CEPAS Agency Liaison will provide a unique identifier to identify agency deposits. The unique identifier will assist agencies in identifying daily deposits from the Contractor's system to bank account statements.
- F2. **Posting of Agency ACH Deposits / Returns:** At agency application set up for ACH debit programs, the CEPAS Agency Liaison will provide the bank account information for the Contractor to deposit agencies daily transactions. The total dollar amount of the daily settlement batch for the agency application will be deposited by initiating an ACH credit to the specified applications bank accounts. Any return items received by the Contractor for the applications will be posted individually to the applications accounts.
- F3. **Company Name and Entry Description:** At agency application set up for ACH debit programs, the CEPAS Agency Liaison will provide the agency name and short description to be used to populate the "Company Name" and "Company Entry Description" of the ACH Batch Header Record. The



Company Name allows 16 alphanumeric characters and the Company Entry Description allows 10 alphanumeric characters. This information will appear on the customers' bank statements to identify the source of the withdrawal. A future enhancement to add Company Entry Description and Company Name will be available by 7/31/2007.

- F4. **Timing of ACH Deposits:** The Contractor will transfer the daily file of ACH debit settlement batches to its ODFI for inclusion in the first ACH window following settlement cut off (11:59 p.m.). If the State loses interest on ACH transactions because of late settlement of transactions, the Contractor may be assessed damages. The damages will be assessed based on a calculation of the lost interest earnings on the value of the ACH transactions settled late times the monthly earnings credit rate earned by the State at LaSalle Bank and the number of days delayed in settling the transactions. If the State's customers incur late penalties as a result of failure of the Contractor's system, those penalties may also apply (e.g. taxes paid late).
- F5. **Credit Card Deposits:** The State's credit card acquirer, Nova, facilitates deposit of credit card funds generated through the Contractor's system. The Contractor must settle transactions daily to Vital in order for Vital to provide details to Nova.

**G. IMPLEMENTATION - RESERVED**

**1.2 Roles and Responsibilities**

The project team will consist of a primary Project Manager from both Contractor and the State of Michigan who will have joint responsibility for meeting deadlines and keeping the project on track within their respective organizations. The project team will also consist of additional personnel who will be instrumental in the implementation and ongoing operation of the Contractor's solution.

**1.201 CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES**

The Contractor's Project Manager will be responsible for notifying the State of Michigan Project Manager of any proposed changes to the Project Plan.

**Single Point Person:** The Contractor's Project Manager will act as a single point person and will work with Treasury Receipts Processing staff to assist with agency related problems. Examples would include report problems, general questions, assistance with new agency account applications, reconciliation concerns, and training. The Contractor must also provide a single point person to work with the State's information technology staff to answer technical questions and provide technical assistance. Questions or concerns must be resolved within one business day (See Section 1.104, E3.).

**Contractor Key Personnel**

Name	Role	Responsibility
Kristen Decker	Business Support Specialists (PM)	Implementation Coordinator and lead customer service contact
Mike Capistran	Technical Support Specialist	Technical Support
Dan Tomaka	Account Manager (PM for enhanced enrollment option)	Contract Administrator

**Ms. Kristen Decker-  
Business Specialist, PayPoint Product Manager (Project Manager)**

Ms. Decker is the single point of contact for the State's project manager and Treasury staff throughout the engagement. Ms. Decker will support new agency business applications and she is also responsible for managing the day-to-day operational issues reported by the State.



Ms. Decker and her team will record any problem, question, concern, or request for assistance reported by the State. The PayPoint Support group will manage and track the progress of these calls using the Call Tracking tool. Ms. Decker and her team will review the call/issue list with the State on a regular basis. Ms. Decker is responsible for responding to these requests within one business day.



**Mr. Mike Capistran-  
Technical Specialist, Application Development Manager**

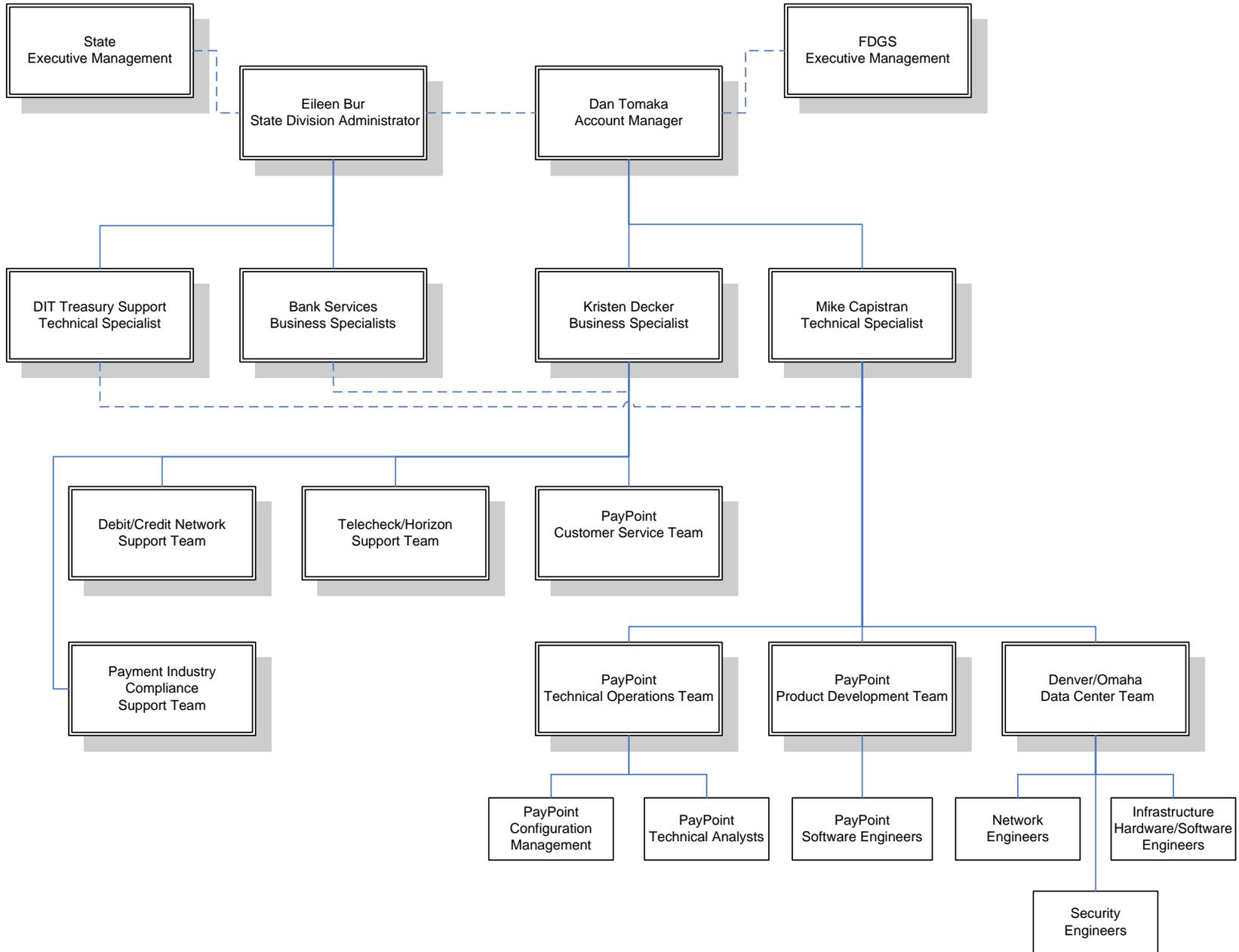
Mr. Capistran is the single point of contact for the State's Department of Information Technology (DIT) staff to answer technical questions and provide technical assistance as needed. Mr. Capistran manages the First Data Government Solutions Denver Solution Center today. His technical knowledge of PayPoint is enhanced by his application development experience. He also has responsibility for operations and support. Mr. Capistran is responsible for maintaining the production environment, disaster recovery, business continuity planning, and test regions to ensure high availability for First Data Government Solutions' customers.

**Mr. Dan Tomaka-  
Account Manager**

Mr. Dan Tomaka is the single point of contact for the State's Treasury Administrator and whoever oversees the performance of the contract for the State. Mr. Tomaka is currently the First Data Government Solutions contract manager overseeing the original contract and he provides the first point of escalation. Mr. Tomaka will stay active in the day-to-day operations of the program and he's ready to actively engage as needed. Dan has facilitated in the resolution of contract issues in the past and will continue to play that role going forward. He will also establish regular meetings with the State's contract oversight manager to ensure First Data Government Solutions is performing to the State's satisfaction.

***If the State requests to exercise the enhanced enrollment functionality option defined in section B.12, Contractor will assign Dan Tomaka as Project Manager to manage the development and implementation of the enhanced enrollment. If Mr. Tomaka is unavailable the State reserves the right to approve his replacement.***

### Organizational Chart





## 1.202 STATE STAFF, ROLES, AND RESPONSIBILITIES

Jointly, the Department of Information Technology (DIT) and the Department of Treasury will oversee the statewide Contract.

**Department of Information Technology (DIT) Project Manager:** Assigned to Treasury and will oversee the Contract performance during the term of the Contract and to support/assist the Department of Treasury and provide guidance to the CEPAS Technical Support Contact who supports agency applications technical needs.

**Administrator for the Department of Treasury, Receipts Processing Division:** Will work jointly with the DIT Project Manager to oversee the Contract business performance during the term of the Contract. Receipts Processing is the Business Owner of CEPAS.

**CEPAS Technical Support Contact::** Will support the Department of Treasury and agency applications with interface questions, telecommunication issues and other technical needs.

**Manager of the Banking Services Section:** Will oversee the statewide Contract and provide guidance to the CEPAS Program Manager, ACH Coordinator, Credit Card Coordinator and assist the Administrator.

**CEPAS Program Manager.** Will be the dedicated contact for credit card issues with the CEPAS contractor. Roles include overseeing the Contract performance on a day-to-day basis during the term of the Contract and keeping the project on track. The CEPAS Program Manager also is responsible for working with the Contractor to resolve business related issues, working with the Contractor and agencies to set up new merchant accounts, testing applications, training agency staff, analyzing volume and costs, assisting agency staff in resolving problems, and any card related issues.

**ACH Coordinator** will serve as the back up to the CEPAS Program Manager. The ACH Coordinator is the dedicated contact for ACH issues with the CEPAS contractor. Roles include overseeing ACH performance issues, working with the Contractor to resolve ACH business related issues, working with the contractor and agencies to set up new ACH accounts, training agency staff, analyzing volume and costs, assisting agency staff in resolving problems, and any ACH related issues.

**Credit Card Coordinator:** Will assist the CEPAS Program Manager, setting up new merchant accounts, creating and maintaining accounting profiles, assisting with testing applications, and assisting agency staff in resolving reconciliation problems.

## 1.203 OTHER ROLES AND RESPONSIBILITIES

The State has a statewide contract with Nova Information Systems for processing credit and debit cards. Nova is the State's acquirer.

All credit/debit card transactions processed through this contract will be processed through Vital Payment Services. Bidders must be certified with Vital for bids to be considered for this RFP.

## 1.3 Project Plan

### 1.301 PROJECT PLAN MANAGEMENT

1. **Contract Conversion:** The Contractor will carry out this project under the direction and control of the Michigan Departments of Information Technology and Treasury. Once approved by Treasury, the Contractor will work with each department to implement this Contract. The Contractor cannot work directly with a department without Project Manager or designee (Treasury) authorization (See Sections 1.202 and 2.401).



2. **Project Manager:** There will be continuous liaison with the Project Manager or designee during implementation for example (Optional Enrollment and Pin Based Debit Functionality). The Contractor's Project Manager will meet with the Project Manager or designee on a biweekly basis, at a minimum, during implementation for the purpose of reviewing progress and providing necessary guidance in solving problems that arise. (See Section 2.401). The Treasury business owner will be included in these updates.
3. **Progress Reports:** During implementation the Contractor will submit brief written biweekly summaries of progress to the Project Manager or designee. The summary will outline the work accomplished during the reporting period; work to be accomplished during the subsequent reporting period; problems, real or anticipated, which should be brought to the attention of the Project Manager; and notification of any significant deviation from previously agreed-upon work plans with a corrective action plan established.

*Additionally, within 30 days after the Effective Date of the Contract resulting from this Statement of Work, the parties shall determine an appropriate set of meetings to be held between representatives of the State and Contractor. Contractor shall prepare and circulate an agenda prior to the meeting(s).*

4. **Quarterly Meetings:** Subsequent to implementation, the Contractor Team and the Project Manager or designee will meet quarterly, at a minimum, to review operational items. After implementation, the biweekly summary reports will be replaced by Incident Reports as needed. Incident Reports will be utilized to document system problems and issues and action taken to resolve them. See **Attachment 3** for an example of the Incident Report document. (Also see Section 1.104, E9.). Statistical reports will also be required on an ongoing basis and will be used as management reporting tools.
5. **Project Plan:** The Contractor shall submit a Project Plan (Article 1, Attachment E) to the State's Project Manager within 30 days of contract execution. The Project Plan must include the following:
  - a.) The Contractor's project organizational structure
  - b.) The Contractor's staffing table with names and title of personnel assigned to the project. Necessary substitutions due to change of employment status and other unforeseen circumstances may only be made with prior approval of the State.
  - c.) The project breakdown showing sub-projects, activities and tasks, and resources required and allocated to each. The project plan must reflect the task lists identified in each appropriate section of this Statement of Work.
  - d.) The time-phased plan in the form of a graphic display using Microsoft Project, showing each event, task, milestone, and decision point in your work plan.
  - e.) The project Plan shall contain an ongoing section of tasks to be completed on an on-going basis, such as SAS 70 reports, statistical reporting, PCI compliance, Disaster Recovery site rollovers, etc.
  - f.) Any changes to scope or schedule or budget must follow a Change Management process (Section 1.403), and it must be agreed upon and communicated to the State's Project Manager in writing explaining the reason for the change and the impact.

### 1.302 REPORTS

1. **Ad Hoc Reporting:** The Contractor's system must provide ad-hoc reporting. The reporting system must provide the ability to add or remove fields as needed.
2. **Display Fields:** The Reporting must provide the ability to display the following fields:
  - a.) Truncated account number (credit/debit/checking or savings)
  - b.) Routing Number
  - c.) Expiration Date
  - d.) Dollar Amount
  - e.) Transaction Time



- f.) Convenience fee
- g.) Tax Amount
- h.) Customer Name, address, phone, or email address
- i.) Contents of comments field
- j.) Approval Code
- k.) Confirmation Number
- l.) Agency Name,
- m.) Application Name
- n.) Settlement date
- o.) Settlement Batch Amount
- p.) Card Type
- q.) Payment Status
- r.) Column Sub-Totals and Totals for number of transactions and dollar amounts
- s.) Other fields as needed

3. **Report Options:** Reporting system must provide the options to report by:

- a.) Specified Date Range
- b.) Card Type
- c.) Summarized totals
- d.) Transaction Details
- e.) Settlement Batch (must match batch amount sent to Vital)
- f.) Agency, Agency Application, Association and Statewide
- g.) Payment Channels
- h.) Payment Type

4. **Report Sorting:** System must allow user to sort the report by any specified field in ascending or descending order.

5. **Report Templates:** System must provide the ability to create templates for reports that can be run without re-entry of data/field requirements. Templates created must be available for statewide usage. Reports must also be available by agency or association level.

**Contractor’s System Presently Meets these Requirements**

**Contractors Response to Requirement:**

*PayPoint provides Report Templates that are created and executed by individual users. The user can then click “Run” every time they need to create the report. The template option is available for all reports. The report templates are dependent on the User’s Role.*

6. **CEPAS Incident Reports:** The Contractor is required to provide written responses to CEPAS Incident Reports and maintain an Incident Report Summary document. See section 1.104, E9. Written responses to incident reports are due within 10 business days of the receiving the incident.

7. **Security Performance Reports:** The Contractor will provide Security Performance Reports monthly to designated State areas (i.e. Treasury Office of Security and Receipts Processing). See Section 1.104.

8. **SAS 70 and PCI Reports:** The Contractor will supply annual SAS 70 audits and quarterly PCI reports to the Project Manager or designee. See Section 1.104.

9. **Project Implementation Reports:** During implementation the Contractor will submit brief written biweekly summaries of progress to the Project Manager or designee.

10. **12 Month Rolling Transaction Volume Report:** The Contractor must provide the Treasury CEPAS Program Manager with a monthly report showing the previous 12 months processed volume. The report



will be used by the Contractor to determine the range for the transaction fee for the month. See Section 1.601, 1., C.

11. **Management Reports:** Management Reports are to be provided electronically to the designated Treasury staff by the 5th calendar day of the next month. The Contractor must provide the Treasury CEPAS Program Manager with monthly Management Reports including:

- a. A statistical report that lists all applications in production, grouped by State agency, the volume of transaction settled per application, the dollar amount settled per application, including a statewide total for all agency applications. The report should also list the fiscal year total for each application for both transaction volume and dollars settled.
- b. A report that lists all scheduled and unscheduled downtime for the month. The report must include for each occurrence, the date and beginning and ending time the downtime occurred, the total time down, a summarized reason for the downtime, a description of the State applications that were affected by the downtime. The report must include totals for the amount of unscheduled and scheduled downtime for the month.
- c. A report that lists the average response time for each agency application.

**Contractor’s System Presently Meets these Requirements**

**Contractors Response to Requirement:**

*First Data Government Solutions will provide a statistical report for applications and report listing all scheduled and unscheduled downtime.*

12. **Risk Assessment Review:** The Contractor will supply a copy of its annual Risk Assessment Review to the Project Manager or designee. See Section 1.402.

13. **Monthly Invoice:** The Contractor will provide a monthly invoice no later than 15 calendar days of the next month. See Section 1.601, 1. F.

14. **Security Reports:** The Contractor will provide access to Security Reports. The reports will be in an electronic format. The reports will identify user access information and user activity within the system.

**1.4 Project Management**

**1.401 ISSUE MANAGEMENT**

Issues are those things that endanger the project. It includes imminent threats and events that may have already occurred. Issues will be documented by the Project Manager or designee on Incident Reports. Incident Reports will report system problems and issues that affect State customers or State agency reconciliation processes, dates the incident occurred and was discovered, action taken to resolve them, and post incident recommendations.

If the Contractor fails to take action, or the action taken was ineffective in resolving the issue, the Project Manager or designee will schedule a meeting with the Contractor’s executive management to discuss the issue and establish a strategy and timeline for resolution.

If the strategy fails and/or timelines are unreasonably delayed, the Project Manager or designee may contact the Department of Management and Budget, Acquisition Services to request issuance of a *Complaint to Vendor* to inform the Contractor of the State’s dissatisfaction with resolution of the issue.

**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 shall be conducted at the beginning of the project, as needed when new risk is identified, and at least on an annual basis. These reports will be provided to the Project Manager or designee.

Contractor will mitigate risks by ensuring the State has plenty of time to test new PayPoint Releases. Typically, the State has 20 business days to test a new release. The State's project team will have the option to test as much or a little as they'd like. A process will be implemented to accept and track reported issues. These issues go directly to the PayPoint Product Manager.

If the State's agencies using PayPoint encounter a problem during acceptance testing a new release, the release is put on hold until its resolved and the State has an opportunity to perform regression testing. The product team quickly assesses the issues reported and a strategy is developed to deal with each item. The PayPoint Product Development team is very active during this time period. A new fix is developed and readied for client testing after it passes the scrutiny of the Contractor's Quality Assurance group. The cycle will continue until the State reports zero issues.

### 1.403 CHANGE MANAGEMENT

During the course of this project, the following provides a detailed process to follow if a change to this SOW is required:

1. The designated Project Manager of the requesting party will review the proposed change and determine whether to submit the request to the other party.
2. The Contractor's Project Manager and the State will review the proposed change and approve it for further investigation or reject it. (The timing of signature by the State Project Manager will be in accordance with the State's Administrative Board or other applicable approval process). The investigation will determine the effect that the implementation of the Project Change Request (PCR) will have on price, schedule, and other terms and conditions of the Agreement.

A written Change Authorization and/or Change Control Request must be signed by both parties to authorize implementation of the investigated changes. Change Authorizations and/or Change Control Requests will be processed through the state's Acquisition Services Office.

The Contractor will utilize an in-house change management system. Once a change request is identified, it will be thoroughly documented, and assigned a tracking number. Critical information such as involved parties (including approvers, initiators, implementers, and verifiers), relevant dates (open, resolved, implemented, abandoned, etc.), and potential risks are also captured.

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

## **1.5 Acceptance**

### **1.501 CRITERIA**

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



The Contractor's system does not experience unscheduled downtime exceeding the 99.9% system availability requirement during the initial 60 day period following implementation of the Department of State, Renewal by Web application.

The State does not experience any erroneous transactions during the initial 60 day period following implementation of the Department of State, Renewal by Web application.

The State does not lose interest earnings due to delayed ACH settlement during the initial 60 day period following implementation of an ACH application to be determined at time of conversion.

The State receives the lowest applicable interchange rate for credit card authorizations during the initial 60 day period following implementation of the Department of State, Renewal by Web application.

The State experiences acceptable response times as defined in Section 1.104, D4. during the initial 60 day period following implementation of the Department of State, Renewal by Web application.

If the criteria above are not met, the Contractor will implement corrective measures. Once the Project Manager or designee and Contractor agree that the situation has been resolved, another 60 day period will begin with the expectation that the criteria will be met.

## 1.502 FINAL ACCEPTANCE

Final Acceptance is when criteria defined in Section 1.501 are met and all requirements of the Contract are met. A requirement validation process will be completed and signed by both the Contractor and Project Manager or designee.

## 1.6 Compensation and Payment

### 1.601 COMPENSATION AND PAYMENT

- A.) **Firm Pricing:** All prices quoted in **Article 1, Attachment A** will be firm for the duration of the Contract. If the Contract is extended beyond five (5) years, the State and the Contractor may negotiate price increases or decreases. If mutually acceptable rates are not negotiated, the Contract will not be extended.
- B.) **Unit Price Contract:** This is a unit price Contract. For unit prices, the State will only pay for actual transactions processed. The Contractor is responsible for all additional costs, overhead, travel, out-of-pocket costs, etc.

For billing purposes, a "transaction" is defined as:

- a settled transaction
- a voided/cancelled transaction
- a refund
- a declined transaction

The following are examples of events not considered billable transactions:

- an authorization
- an NOC
- an ACH return
- communication failures
- errors
- chargebacks



- duplicate transactions attributable to the Contractor
- refunds of duplicate transactions attributable to the Contractor

**Pricing Table:** The Pricing Table in **Article 1, Attachment A** will be used for this contract and must be completed following the instructions below.

**Transaction Fee Pricing:** The transaction fees bid should include **all** costs for providing the system defined in the Statement of Work including any costs for ODFI services. The State expects volume discounts in the transaction fee pricing based on a monthly review of the previous 12-month transaction volume processed. First year of the contract will be based on the 0 – 800,000 transaction range or the transaction range associated with the actual 12-month volume of the preceding 12-month period, whichever is higher. Subsequently, the transaction range utilized to determine the unit rate will be based on the previous 12-month transaction volume. A rolling 12-month transaction volume report will be used to assess ‘annual volume’ and the movement to the next price range. The Contractor will generate the 12-month rolling transaction volume report and provide it to the Project Manager or designee to be reviewed monthly.

**Bank of Hours:** Article 1, Attachment A includes pricing for a bank of 300 hours to be used for customized enhancements that the State may request.

**Guaranteed ACH Pricing:** Some State agencies may choose to have ACH debit transactions guaranteed by the Contractor. By guaranteeing the transaction the Contractor is assuming the risk of the transaction being returned.

**Monthly Invoice:** The Contractor will supply an invoice electronically (i.e. Excel spreadsheet by email) that has one page for each State Department that lists the period covered, number of transactions processed for each application within that Department, the unit price, and total cost for the application. At the discretion of the State, some groupings of applications will be reported at the association (merchant chain) level. The page must also contain a total item count and dollar amount for the Department (total of all applications). The invoice must also contain a summary total page that lists an item count and dollar amount for the month for all State Departments (statewide total). The Contractor will provide the invoice for the month by no later than 15 calendar days of the following month.

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

### **1.701 ADDITIONAL TERMS AND CONDITIONS SPECIFIC TO THIS SOW**

#### **Other Vendors**

The State has and/or may contract with other entities to perform technical services or provide other equipment and software to work with the items provided under this contract. The Contractor agrees to work with these other entities and provide them necessary technical information and required support to accomplish the efforts required by the contract with the State.



**Article 1, Attachment A**

Pricing

Range of Transactions	Unit Fee	X Estimated Annual Volume	Total Estimated Cost
0 - 800,000	\$ 0.19	800,000	\$ 152,000.00
800,001 - 1,000,000	\$ 0.19	1,000,000	\$ 190,000.00
1,000,001 - 1,300,000	\$ 0.17	1,300,000	\$ 221,000.00
1,300,001 - 1,500,000	\$ 0.17	1,500,000	\$ 255,000.00
1,500,001 - 1,700,000	\$ 0.17	1,700,000	\$ 289,000.00
1,700,001 - 1,900,000	\$ 0.17	1,900,000	\$ 323,000.00
1,900,001 - 2,100,000	\$ 0.17	2,100,000	\$ 357,000.00
2,100,001 - 2,600,000	\$ 0.17	2,600,000	\$ 442,000.00
2,600,001 - 3,100,000	\$ 0.16	3,100,000	\$ 496,000.00
3,100,001 - 3,800,000	\$ 0.15	3,800,000	\$ 570,000.00
3,800,001 - 4,500,000	\$ 0.14	4,500,000	\$ 630,000.00
4,500,001 - 5,000,000	\$ 0.13	5,000,000	\$ 650,000.00
<b>Total Volume and Cost for all ranges</b>		29,300,000	\$ 4,575,000.00

**Table 1 - Weighted Average**

Total Cost for all Ranges from Table 1	Divided by Total Estimated Annual Volume from table 1	Weighted Avg. Rate Per Item	Estimated unit fee value Weighted Avg. X 800,000 Items
\$ 4,575,000.00	29,300,000	\$ 0.16	\$ 124,914.68

**Table 2 - Bank of Hours for Customized Enhancements**

Rate per Hour	Number of Hours	Total Cost
\$ 150.00	300	\$ 45,000.00

**Table 3 - Guaranteed ACH Debit Pricing (Unknown if when/will use)**

Pricing Method	Cost	Estimated Volume	Estimated Cost
Unit Fee or		25,000	\$ -
Percentage (of Amount)	3.00%	\$ 3,500,000	\$ 105,000.00
		<b>Total Cost</b>	\$ 105,000.00

**Table 4 - Bid Award Basis**

Table 1 - Estimated Unit fee value	\$ 124,914.68
Table 2 - Bank of Hours	\$ 45,000.00
Table 3 - Estimated Guaranteed Cost	\$ 105,000.00
<b>Total</b>	\$ 274,914.68



<b>Table 5 - Estimated Contract Value</b>			
<b>Component</b>	<b>Unit Fee</b>	<b>Estimated Volume/Use</b>	<b>Total Estimated Cost</b>
Per Item Fees - Year 1	\$ 0.17	1,340,153	\$ 227,826.01
Per Item Fees - Year 2	\$ 0.17	2,245,622	\$ 381,755.74
Per Item Fees - Year 3	\$ 0.16	2,715,246	\$ 434,439.36
Per Item Fees - Year 4 (Optional)	\$ 0.15	3,284,945	\$ 492,741.75
Per Item Fees - Year 5 (Optional)	\$ 0.14	4,270,429	\$ 597,859.99
Bank of Hours	\$ 150.00	300	\$ 45,000.00
Guaranteed ACH Fees	Total Cost from Table 3		\$ 105,000.00
<b>Total Estimated Contract Value (Years 1-3)</b>			<b>\$ 1,194,021.11</b>
<b>Total Estimated Contract Value (Including Optional Years 4 and 5)</b>			<b>\$ 2,284,622.85</b>

<b>Table 6 - Total Estimated Contract Value Breakdown (Must equal 100%)</b>		
Startup Costs	0%	Bidders must indicate the percentage breakdown of their Total Estimated Contract Value (Years 1-3) in Table 5.
Operational Costs	100%	
100.00%		

<b>Table 7 - Startup Costs Break Even Point</b>	
Number of Transactions to Recoup Startup Costs	0

Table 8 - Optional Enrollment Cost

Enrollment Functionality	\$121,000	If implemented at the beginning of the new project
Month 13 to Month 24	\$127,100	
Month 25 to Month 36	\$133,400	
Month 37 to Month 48	\$140,100	
Month 49 to Month 60	\$147,100	



**Article 1, Attachment B**

Organizational Chart, including Key Personnel

(See Section 1.201)

**Article 1, Attachment C**  
Labor Rates-RESERVED

**Article 1, Attachment D**  
Deliverables-RESERVED



**Article 1, Attachment E**  
**Project Plan**  
 (Actual Project Plan to be provided within 30 Days of Contract Signature)

ITB#0716200156		First Data Government Solutions CEPAS Implementation Plan												1
ID	Task Name	Duration	Start	% Complete	Finish	January		July		January		July		
						3/7	12/5	9/4	6/4	3/4	12/2	8/31	5/31	
1	Michigan CEPAS II Contract	912 days	Thu 2/2/06	0%	Fri 7/31/09									
2	Migration Implementation Plan	0 days	Mon 7/31/06	100%	Mon 7/31/06				◆ 7/31					
3	Data Conversion	0 days	Mon 7/31/06	100%	Mon 7/31/06				◆ 7/31					
4	Build Network Interfaces	0 days	Mon 7/31/06	100%	Mon 7/31/06				◆ 7/31					
5	Agency Migration	0 days	Mon 7/31/06	100%	Mon 7/31/06				◆ 7/31					
6	Interface Design	0 days	Mon 7/31/06	100%	Mon 7/31/06				◆ 7/31					
7	Interface Construction	0 days	Mon 7/31/06	100%	Mon 7/31/06				◆ 7/31					
8	Interface Testing	0 days	Mon 7/31/06	100%	Mon 7/31/06				◆ 7/31					
9	Agency Training	0 days	Mon 7/31/06	100%	Mon 7/31/06				◆ 7/31					
10	New Business Application Implementation Plan	912 days	Thu 2/2/06	0%	Fri 7/31/09									
11	Revise Implementation Plan	250 days	Thu 2/2/06	0%	Wed 1/17/07									
12	Accelerated Deployment	3 days	Mon 7/31/06	0%	Wed 8/2/06									
13	POS Partner Conversion	3 days	Mon 7/31/06	0%	Wed 8/2/06									
14	Verisign Conversion	3 days	Mon 7/31/06	0%	Wed 8/2/06									
15	Websphere Payment Manager Conversion	3 days	Mon 7/31/06	0%	Wed 8/2/06									
16	Spherics Conversion	3 days	Mon 7/31/06	0%	Wed 8/2/06									
17	Frank Solutions Conversion	3 days	Mon 7/31/06	0%	Wed 8/2/06									
18	Swipe Machines Connection	3 days	Mon 7/31/06	0%	Wed 8/2/06									
19	Execute Accelerated Deployment plan	250 days	Thu 2/2/06	0%	Wed 1/17/07									
20	Process Merchant Application	120 days	Thu 8/3/06	0%	Wed 1/17/07									
21	Build Interface	120 days	Thu 2/2/06	0%	Thu 7/20/06									
22	Test Application	120 days	Mon 7/31/06	0%	Fri 1/12/07									
23	Certification Mode	120 days	Mon 7/31/06	0%	Fri 1/12/07									
24	Migrate to Production	120 days	Mon 7/31/06	0%	Fri 1/12/07									
25	Revise Communication Plan	1 day	Thu 8/3/06	0%	Thu 8/3/06									
26	Revise Contact List	1 day	Thu 8/3/06	0%	Thu 8/3/06									
27	Schedule bi-weekly Meetings	1 day	Thu 8/3/06	0%	Thu 8/3/06									
28	Schedule Monthly Meetings	1 day	Thu 8/3/06	0%	Thu 8/3/06									
29	Schedule Quarterly Meetings	1 day	Thu 8/3/06	0%	Thu 8/3/06									
30	Review Incident Report Matrix	1 day	Thu 8/3/06	0%	Thu 8/3/06									
31	Review Call Tracking Matrix	1 day	Thu 8/3/06	0%	Thu 8/3/06									
32	Add Meetings or Performance/Progress Reports	1 day	Thu 8/3/06	0%	Thu 8/3/06									
33	Operation Plan	785 days	Mon 7/31/06	0%	Fri 7/31/09									
34	Monitor/Support PayPoint Product	785 days	Mon 7/31/06	0%	Fri 7/31/09									

Project: CEPAS Project Schedule Date: Tue 10/17/06	Task  Milestone  External Tasks Split  Summary  External Milestone Progress  Project Summary  Deadline
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Print: Tue 10/17/06  
 FDGS - CEPAS Project Schedule



ITB#0716200156		First Data Government Solutions CEPAS Implementation Plan					2						
ID	Task Name	Duration	Start	% Complete	Finish	January			July		January		July
						3/7	12/5	9/4	6/4	3/4	12/2	8/31	5/31
35	Annual SAS/70 Audit Report	130 days	Mon 7/31/06	0%	Fri 1/26/07								
36	Independent Audit (Annual Report)	70 days	Mon 7/31/06	0%	Fri 11/3/06								
37	Develop Report	40 days	Mon 11/6/06	0%	Fri 12/29/06								
38	Deliver Report to Michigan (January of the following year)	20 days	Mon 1/1/07	0%	Fri 1/26/07								
39	PCI Compliance Reports	20 days	Mon 7/31/06	0%	Fri 8/25/06								
40	Internal Controls and Security Policy	20 days	Mon 7/31/06	0%	Fri 8/25/06								
41	Disaster Recovery Testing (Rollover)	20 days	Mon 7/31/06	0%	Fri 8/25/06								
42	Schedule Migration to Omaha Data Center	20 days	Mon 7/31/06	0%	Fri 8/25/06								
43	PayPoint Product Enhancements	131 days	Mon 7/31/06	0%	Mon 1/29/07								
44	Customer Enrollment System (CES)	131 days	Mon 7/31/06	0%	Mon 1/29/07								
45	CES Requirements Validation (only)	5 days	Mon 7/31/06	0%	Fri 8/4/06								
46	Finalize Design	25 days	Mon 8/7/06	0%	Fri 9/8/06								
47	Construction	20 days	Mon 9/11/06	0%	Fri 10/6/06								
48	Testing	20 days	Mon 10/9/06	0%	Fri 11/3/06								
49	Quality Assurance Testing	20 days	Mon 11/6/06	0%	Fri 12/1/06								
50	User Acceptance Testing	30 days	Mon 12/4/06	0%	Fri 1/12/07								
51	Implementation	11 days	Mon 1/15/07	0%	Mon 1/29/07								
52	MI Approval	1 day	Mon 1/15/07	0%	Mon 1/15/07								
53	Schedule PayPoint Product Release	10 days	Tue 1/16/07	0%	Mon 1/29/07								

Project: CEPAS Project Schedule Date: Tue 10/17/06	Task		Milestone		External Tasks	
	Split		Summary		External Milestone	
	Progress		Project Summary		Deadline	

Print: Tue 10/17/06  
FDGS - CEPAS Project Schedule



**Article 1, Attachment F**  
Service Level Agreement

The parties acknowledge that unscheduled downtime 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 unscheduled downtime in respect of which the State does not elect to exercise its rights under **Section 2.191**, the State may assess Monetary Assessments against Contractor as specified in this Section.

The Contractor is expected to meet a service level objective of 99.9% availability, less than .75 (point 75) hours of unscheduled downtime per calendar month. If unscheduled downtime occurs that exceeds this expectation, then the State shall be entitled to collect damages in the amount specified in the following chart. The amount of the Monetary Assessment will be based on the number of downtime occurrences each month and the total length of time the system is down each month. The purpose of including the number of occurrences in the damage calculation is to emphasize the State's expectation that continuous, ongoing downtime of short duration is unacceptable. The Monetary Assessment will be a percentage of the Contractor's per transaction charges for the month that the downtime occurred. At the start of a new month, the State will provide the Contractor with a list of downtime that occurred the previous month that it expects to receive Monetary Assessments for. Amounts due the State will be reflected as a credit on the corresponding monthly invoice. No delay by the State in assessing or collecting Monetary Assessments shall be construed as a waiver of such rights. The State also reserves the right to waive Monetary Assessments based on the Contractor's recent system performance.

The Contractor shall not be liable for Monetary Assessments when incidents or delays result directly from causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God, fires, floods, epidemics, acts of terrorism, and labor unrest; but in every case the delays must be beyond the control and without the fault or negligence of the Contractor. In addition, any outages related to the following causes shall be excluded from any calculation of downtime:

- Periods of scheduled or emergency maintenance activities or a scheduled outage;
- Problems with the State's site content or the State's or other third party's programming errors;
- Problems caused by systems administration, commands, or file transfers performed by the State's representatives;
- Interruptions in third party networks that prevent users of the Internet from accessing the State Web site;
- Other activities the State directs, denial of service attacks, natural disasters, changes resulting from government, political, or other regulatory actions or court orders, strikes or labor disputes, acts of civil disobedience, acts of war, acts against parties (including carriers and the Contractor's other vendors), and other force majeure events;
- Lack of availability or untimely response by the State to incidents that require the State's participation for problem source identification and/or resolution; and
- The State's breach of its obligations under this Statement of Work.

Monetary Assessments will be assessed as follows:

<b><u>Number of Occurrences</u></b>	>10	10%	15%	20%	25%
	7-9	7.5%	10%	15%	20%
	4-6	5%	7.5%	10%	15%
	1-3	2.5%	5%	7.5%	10%
		.75-2	>2-4	>4-8	>8

**Hours of Downtime**

For example, if the Contractor experienced 5 occurrences of unscheduled downtime for the month, and the hours of downtime totaled 4 hours, the Contractor would be subject to Monetary Assessments of 7.5% of the monthly invoice amount for the month the downtime occurred.



## 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 , Exhibits, and Amendments

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

#### 2.013 Statements of Work

- (a) The parties agree that the Services/Deliverables to be rendered by Contractor pursuant to this Contract (and any future amendments of it) will be defined and described in detail in Statements of Work or Purchase Orders (PO) executed under this Contract. Contractor shall not be obliged or authorized to commence any work to implement a Statement of Work until authorized via a PO issued against this Contract, or an amendment to this Contract (see 2.106). Contractor shall perform in accordance with this Contract, including the Statements of Work/Purchase Orders executed under it.



- (b) Unless otherwise agreed by the parties, each Statement of Work (as defined in Article 1) will include, or incorporate by reference to the appropriate Contract Article 1 Attachment containing, the following information:
  - a description of the Services to be performed by Contractor under the Statement of Work;
  - a project schedule (including the commencement and completion dates for all tasks, subtasks (for all projects of sufficient duration and complexity to warrant sub task breakdown), and Deliverables;
  - a list of the Deliverables to be provided, if any, including any particular specifications and acceptance criteria for such Deliverables, and the dates on which the Deliverables are scheduled to be completed and delivered to the State;
  - all Deliverable price schedules and other charges associated with the Statement of Work, the overall fixed price for such Statement of Work and any other appropriate pricing and payment terms;
  - a specification of Contractor's and the State's respective performance responsibilities with respect to the performance or completion of all tasks, subtasks and Deliverables;
  - a listing of any Key Personnel of Contractor and/or its Subcontractors for that Statement of Work and any future Statements of Work;
  - any other information or provisions the parties agree to include.
- (c) Reserved.
- (d) The initial Statements of Work, as of the Effective Date, are attached to this Contract.

**2.014 Issuing Office**

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

[Steve Motz](#)  
Purchasing Operations  
Department of Management and Budget  
Mason Bldg, 2nd Floor  
PO Box 30026  
Lansing, MI 48909  
[motzs@michigan.gov](mailto:motzs@michigan.gov)  
517-241-3215

**2.015 Contract Compliance Inspector**

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

The **Contract Compliance Inspector** for this Contract is:

Mark Lawrence  
Department of Information Technology  
Mason Bldg, 2nd Floor  
PO Box 30026



Lansing, MI 48909  
Email: [LawrenceM2@michigan.gov](mailto:LawrenceM2@michigan.gov)  
Phone: (517) 335-5857

**2.016 Project Manager**

The following individual will oversee the project:

Name: Dave Borzenski  
Department of Information Technology  
Email: [BorzenskiD@michigan.gov](mailto:BorzenskiD@michigan.gov)  
Phone: (517) 335-0995

**2.020 Contract Objectives/Scope/Background**

**2.021 Background**

Prior to August 2003, electronic payment systems within State government were decentralized and therefore, at times, inefficient and difficult to maintain. Methodology, processes, and system designs varied from payment program to payment program with no unified approach.

In August 2003 the State entered a contract with its current Contractor to supply an enterprise-wide centralized authorization and payment solution. Within State government, the centralized solution is known as the Centralized Electronic Payment and Authorization System (CEPAS). Currently over 25 payment programs from 12 different State departments are processing through the existing system. The monthly processing volume averages approximately 65,000 transactions for over \$6,000,000. Credit card transactions comprise over 95% of current volume.

**2.022 Purpose**

The purpose of this RFP is to obtain bids for an enterprise-wide system for authorization and processing of electronic payments. This centralized system will support multiple electronic payment instruments and a variety of input channels.

**2.023 Objectives and Scope**

The Contractor will provide an enterprise-wide electronic payment system with comprehensive functionality, security, and dependability. See Section 1.101, IN SCOPE and Section 1.102, OUT OF SCOPE.

**2.024 Interpretation**

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

**2.025 Form, Function and Utility**

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

**2.030 Legal Effect and Term**

**2.031 Legal Effect**



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

### 2.032 Contract Term

This Contract is for a period of **three (3) years** commencing on the date that the last signature required to make the Contract enforceable is obtained. All outstanding Purchase Orders shall also expire upon the termination (cancellation for any of the reasons listed in 2.210) of the Contract, unless otherwise extended pursuant to the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

### 2.033 Renewal(s)

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

## 2.040 Contractor Personnel

### 2.041 Contractor Personnel

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

#### (b) Key Personnel

(i) In discharging its obligations under this Contract, Contractor shall provide the named Key Personnel on the terms indicated. **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 thirty (30) days prior to such Key Personnel's removal.

If Contractor fails to assign a replacement to shadow the removed Key Personnel for at least thirty (30) days, in addition to the \$25,000.00 liquidated damages for an Unauthorized Removal, Contractor shall pay the amount of \$833.33 per day for each day of the thirty (30) day shadow period that the replacement Key Personnel does not shadow the removed Key Personnel, up to \$25,000.00 maximum per individual, provided, however, that Contractor will not be assessed any liquidated damages hereunder if Contractor is using reasonable efforts to find a suitable replacement, and the State fails to approve any proposed replacement. The total liquidated damages that may be assessed per Unauthorized Removal and failure to provide thirty (30) days of shadowing shall not exceed \$50,000.00 per individual.

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

(d) Re-assignment of Personnel at the State's Request. The State reserves the right to require the removal from the Project of Contractor personnel found, in the judgment of the State, to be unacceptable. The State's request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good-faith reasons. Replacement personnel for the removed person shall be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with removed personnel results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Service will not be counted in **Section 2.076** for a time as agreed to by the parties.

(e) Staffing Levels.

(i) All staff requirements not specified in the applicable Statement of Work or State-approved project plan as State personnel will be supplied by Contractor. This includes secretarial, clerical and Contract administration support staff necessary for Contractor to perform its obligations hereunder.

(ii) Contractor shall provide sufficient personnel resources for the completion of Contract tasks indicated in Contractor's project plan approved by the State. If the level of personnel resources is insufficient to complete any Contractor Contract tasks in accordance with the Contract time schedule as demonstrated by Contractor's failure to meet mutually agreed to time schedules, Contractor shall promptly add additional qualified personnel resources to the performance of the affected tasks, at no additional charge to the State, in an amount sufficient to complete performance of Contractor's tasks in accordance with the Contract time schedule.



(f) Personnel Turnover. The Parties agree that it is in their best interests to keep the turnover rate of employees of Contractor and its Subcontractors who are performing the Services to a reasonable minimum. Accordingly, if the State determines that the turnover rate of such employees is excessive and so notifies Contractor, Contractor will meet with the State to discuss the reasons for the turnover rate and otherwise use commercially reasonable efforts to minimize such turnover rate. If requested to do so by the State, Contractor will submit to the State its proposals for reducing the turnover rate to an acceptable level. In any event, notwithstanding the turnover of personnel, Contractor remains obligated to perform the Services without degradation and in accordance with the State-approved Contract schedule.

(g) Location. All staff assigned by Contractor to work on the Contract will perform their duties either primarily at Contractor's offices and facilities or at State facilities. Without limiting the generality of the foregoing, Key Personnel will, at a minimum, spend at least the amount of time on-site at State facilities as indicated in the applicable Statement of Work. Subject to availability, selected Contractor personnel may be assigned office space to be shared with State personnel.

#### **2.042 Contractor Identification**

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

#### **2.043 Cooperation with Third Parties**

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

#### **2.044 Subcontracting by Contractor**

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

(b) Contractor shall not delegate any duties under this Contract to a Subcontractor unless the Department of Management and Budget, Purchasing Operations has given written consent to such delegation. The State shall have the right of prior written approval of all Subcontractors and to require Contractor to replace any Subcontractors found, in the reasonable judgment of the State, to be unacceptable. The State's request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good-faith reasons. Replacement Subcontractor(s) for the removed Subcontractor shall be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed Subcontractor, the State will agree to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with a removed Subcontractor results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in **Section 2.076** for a time agreed upon by the parties.

(c) In any subcontracts entered into by Contractor for the performance of the Services, Contractor shall require the Subcontractor, to the extent of the Services to be performed by the Subcontractor, to be bound to



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

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

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

**2.045 Contractor Responsibility for Personnel**

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

**2.050 State Standards**

**2.051 Existing Technology Standards**

The Contractor will adhere to all existing standards as described within the comprehensive listing of the State's existing technology standards at.

<http://www.michigan.gov/dit/0,1607,7-139-34305---,00.html>

**2.052 PM Methodology Standards**

The State has adopted a standard documented Project Management Methodology (PMM) for use on all Information Technology (IT) based projects. See the State's PMM website at

<http://www.michigan.gov/projectmanagement>.

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

**2.053 Adherence to Portal Technology Tools**

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

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



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

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

#### **2.054 Acceptable Use Policy**

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

### **2.060 Deliverables**

#### **2.061 Ordering**

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

(b) DIT will continue to oversee the use of this Contract by End Users. DIT may, in writing, delegate to agencies the authority to submit requests for certain services directly to the Contractor. DIT may also designate, in writing, some services as non-delegated and require DIT review and approval before agency acquisition. DIT will use Contractor provided management reports and periodic random agency audits to monitor and administer contract usage for delegated services.

#### **2.062 Software**

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

#### **2.063 Hardware**

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

#### **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 RESERVED - Liquidated Damages**

### **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 - RESERVED**

**2.076 Service Level Agreements (SLAs) as defined in Article 1, Attachment F**

(a) SLAs will be completed with the following operational considerations:

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

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

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

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

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

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

**2.080 Delivery and Acceptance of Deliverables**

**2.081 Delivery Responsibilities**

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

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



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

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

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



## 2.082 Delivery of Deliverables

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

## 2.083 Testing

(a) Prior to delivering any of the above-mentioned Statement of Work Physical Deliverables or Services to the State, Contractor will first perform all required quality assurance activities to verify that the Physical Deliverable or Service is complete and in conformance with its specifications listed in the applicable Statement of Work or Purchase Order. Before delivering a Physical Deliverable or Service to the State, Contractor shall certify to the State that (1) it has performed such quality assurance activities, (2) it has performed any applicable testing, (3) it has corrected all material deficiencies discovered during such quality assurance activities and testing, (4) the Deliverable or Service is in a suitable state of readiness for the State’s review and approval, and (5) the Deliverable/Service has all Critical Security patches/updates applied.

(b) If a Deliverable includes installation at a State Location, then Contractor shall (1) perform any applicable testing, (2) correct all material deficiencies discovered during such quality assurance activities and testing, and (3) inform the State that the Deliverable is in a suitable state of readiness for the State’s review and approval. To the extent that testing occurs at State Locations, the State shall be entitled to observe or otherwise participate in testing.

## 2.084 Approval of Deliverables, In General

(a) All Deliverables (Physical Deliverables and Written Deliverables) and Services require formal written approval by the State, in accordance with the following procedures. Formal approval by the State requires that the Deliverable be confirmed in writing by the State to meet its specifications, which will include the successful completion of Testing as applicable in **Section 2.083**, to be led by the State with the support and assistance of Contractor. The parties acknowledge that the approval process set forth herein will be facilitated by ongoing consultation between the parties, visibility of interim and intermediate Deliverables and collaboration on key decisions.

(b) The State’s obligation to comply with any State Review Period is conditioned on the timely delivery of Deliverables/Services being reviewed.

(c) Prior to commencement of its review or testing of a Deliverable/Service, the State may inspect the Deliverable/Service to confirm that all components of the Deliverable/Service have been delivered without material deficiencies. If the State determines that the Deliverable/Service has material deficiencies, the State may refuse delivery of the Deliverable/Service without performing any further inspection or testing of the Deliverable/Service. Otherwise, the review period will be deemed to have started on the day the State receives the Deliverable or the Service begins, and the State and Contractor agree that the Deliverable/Service is ready for use and, where applicable, certification by Contractor in accordance with **Section 2.083(a)**.

(d) The State will approve in writing a Deliverable/Service upon confirming that it conforms to and, performs in accordance with, its specifications without material deficiency. The State may, but shall not be required to, conditionally approve in writing a Deliverable/Service that contains material deficiencies if the State elects to permit Contractor to rectify them post-approval. In any case, Contractor will be responsible for working diligently to correct within a reasonable time at Contractor’s expense all deficiencies in the Deliverable/Service that remain outstanding at the time of State approval.



(e) If, after three (3) opportunities (the original and two repeat efforts), Contractor is unable to correct all deficiencies preventing Final Acceptance of a Deliverable/Service, the State may: (i) demand that Contractor cure the failure and give Contractor additional time to cure the failure at the sole expense of Contractor; or (ii) terminate the particular Statement of Work for default, either in whole or in part by notice to Contractor provided Contractor is unable to cure such breach. Notwithstanding the foregoing, the State shall not use, as a basis for exercising its termination rights under this Section, deficiencies discovered in a repeat State Review Period that could reasonably have been discovered during a prior State Review Period.

(f) The State, at any time and in its reasonable discretion, may halt the testing or approval process if such process reveals deficiencies in or problems with a Deliverable/Service in a sufficient quantity or of a sufficient severity as to make the continuation of such process unproductive or unworkable. In such case, the State may stop using the Service or return the applicable Deliverable to Contractor for correction and re-delivery prior to resuming the testing or approval process.

### **2.085 Process For Approval of Written Deliverables**

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



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

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

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

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

## **2.088 Final Acceptance**

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

## **2.090 Financial**

### **2.091 Pricing**

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

Each Statement of Work/PO issued under this Contract shall specify (or indicate by reference to the appropriate Contract Exhibit) the firm, fixed prices for all Services/Deliverables, and the associated payment milestones and payment amounts. To the extent the parties agree that certain specific Services will be provided on a time and materials basis, such Services shall be provided at the Amendment Labor Rates (**Article 1, Attachment C**). 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 A** Unless specifically identified in an applicable Statement of Work.

(c) Services/Deliverables Covered

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

(d) Labor Rates

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

**2.092 Invoicing and Payment Procedures and Terms**

(a) Invoicing and Payment – In General

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

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

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

(b) Taxes (See Section 2.305 and Article 3, Section 3.022-3.024 for additional )

The State is exempt from Federal Excise Tax, State and Local Sales Taxes, and Use Tax with respect to the sale to and use by it of tangible personal property. Such taxes shall not be included in Contract prices as long as the State maintains such exemptions. Copies of all tax exemption certificates shall be supplied to Contractor, if requested.



## (c) Out-of-Pocket Expenses

**Contractor acknowledges that the out-of-pocket expenses that Contractor expects to incur in performing the Services/ providing the Deliverables (such as, but not limited to, travel and lodging, document reproduction and shipping, and long distance telephone) are included in Contractor's fixed price for each Statement of Work.** Accordingly, Contractor's out-of-pocket expenses are not separately reimbursable by the State unless, on a case-by-case basis for unusual expenses, the State has agreed in advance and in writing to reimburse Contractor for such an expense at the State's current travel reimbursement rates. See [http://www.mi.gov/dmb/0,1607,7-150-9141\\_13132---,00.html](http://www.mi.gov/dmb/0,1607,7-150-9141_13132---,00.html) for current rates.

## (d) Pro-ration

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

## (e) Antitrust Assignment

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

## (f) Final Payment

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

**2.093 State Funding Obligation**

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

**2.094 RESERVED - Holdback****2.095 Electronic Payment Availability**

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

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

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



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

### **2.102 Problem and Contract Management Procedures**

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

### **2.103 Reports and Meetings**

(a) Reports.

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

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

(b) Meetings.

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

### **2.104 System Changes**

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

### **2.105 Reserved**

### **2.106 Change Requests**



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

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

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

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



(a) Change Requests

(i) State Requests

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

(ii) Contractor Recommendations

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

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

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

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

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

## 2.107 Management Tools

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

## 2.110 Records and Inspections

### 2.111 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. All inspections carried out hereunder shall be conducted during normal business hours, shall be at the State's cost, and shall be subject to Contractor's security rules and regulations. No state agency shall conduct more than one (1) audit per calendar year, and no more than six (6) total audits will be performed in any calendar year.

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

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

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

## **2.112 Errors**

(a) If the audit demonstrates any errors in the statements provided to the State, then the amount in error shall be reflected as a credit or debit on the next invoice and in subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried for more than four (4) quarterly statements. If a balance remains after four (4) quarterly statements, then the remaining amount will be due as a payment or refund within forty-five (45) days of the last quarterly statement that the balance appeared on or termination of the contract, whichever is earlier.

(b) In addition to other available remedies, the difference between the payment received and the correct payment amount is greater than ten percent (10%), then the Contractor shall pay all of the reasonable costs of the audit.



## **2.120 State Responsibilities**

### **2.121 State Performance Obligations**

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

## **2.130 Security**

### **2.131 Background Checks**

The Contractor shall authorize the investigation of its personnel proposed to have access to State facilities and systems on a case by case basis. Contractor personnel working in Contractor facilities (even if working on an application for the State) shall not be subject to this provision. 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. Notwithstanding anything herein to the contrary, FDGS' Paypoint product and all functionality related thereto, including enhancements, modifications and additional development, (collectively, the "Paypoint Works") shall not be considered works made for hire and shall remain the sole property of FDGS.

**Vesting of Rights.** With the sole exception of any preexisting licensed works identified in **Exhibit C**, and Paypoint Works, 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 RESERVED - Source Code Escrow**

### **2.163 Rights in Data**

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



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

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

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

#### **2.165 Standard Software**

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

#### **2.166 Pre-existing Materials for Custom Software Deliverables**

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

#### **2.167 General Skills**

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

### **2.170 Warranties And Representations**

#### **2.171 Warranties and Representations**

The Contractor represents and warrants:

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

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



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



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

## **2.172 Software Warranties**

### **(a) Performance Warranty**

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

### **(b) No Surreptitious Code Warranty**

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

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

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

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

### **(c) Calendar Warranty**

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

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



(d) Third-party Software Warranty

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

**2.173 Equipment Warranty**

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

The Contractor represents and warrants that the equipment/system(s) shall be in good operating condition and shall operate and perform to the requirements and other standards of performance contained in this Contract, when installed, at the time of Final Acceptance by the State, and for a period of **one (1) year** commencing upon the first day following Final Acceptance.

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

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

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

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

**2.174 Physical Media Warranty**

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

**2.175 Standard Warranties**

(a) Warranty of Merchantability

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

(b) Warranty of fitness for a particular purpose

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



## (c) Warranty of title

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

**2.176 Consequences For Breach**

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

**2.180 Insurance****2.181 Liability Insurance**

## (a) Liability Insurance

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

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

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

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

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

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

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

Before the Contract is signed by both parties or before the purchase order is issued by the State, the Contractor must furnish to the Director of Purchasing Operations, certificate(s) of insurance verifying insurance coverage ("Certificates"). The Certificate must be on the standard "accord" form or equivalent. **THE CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING.** All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) shall contain a provision indicating that coverages afforded under the policies WILL NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED without THIRTY (30) days prior written notice, except for ten (10) days for non-payment of premium, having been given to the Director of Purchasing Operations, Department of Management and Budget. Notwithstanding the above, Contractor shall not be required to provide notice to the State of any instance where the scope or amount of coverage is increased. 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 thirty (30) days written notice, the State may pay such premium or procure similar insurance coverage from another company or companies; and at the State's election, the State may deduct the entire cost (or part thereof) from any payment due Contractor, or Contractor shall pay the entire cost (or any part thereof) upon demand by the State.

**2.190 Indemnification**

**2.191 Indemnification**

(a) General Indemnification

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

(b) Code Indemnification

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



(c) Employee Indemnification

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

(d) Patent/Copyright Infringement Indemnification

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

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

Notwithstanding the foregoing, the Contractor shall have no obligation to indemnify or defend the State for, or to pay any costs, damages or attorneys' fees related to, any claim based upon (i) equipment developed based on written specifications of the State; or (ii) use of the equipment in a configuration other than implemented or approved in writing by the Contractor, including, but not limited to, any modification of the equipment by the State; (iii) equipment or software created by any party other than Contractor as listed in Attachment 4 ; or (iv) the combination, operation, or use of the equipment with equipment or software not supplied by the Contractor under this Contract.

### **2.192 Continuation of Indemnification Obligations**

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

### **2.193 Indemnification Procedures**

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

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



Election”). After notifying Contractor of a claim and prior to the State receiving Contractor’s Notice of Election, the State shall be entitled to defend against the claim, at Contractor’s expense, and Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during such period.

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

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

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

### **2.201 Limits of Liability**

The Contractor’s liability for damages to the State shall be limited to two times the value of the Contract or \$200,000 which ever is higher. The foregoing limitation of liability shall not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; 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; 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 expedited service for repair and work around in the event of a natural or manmade disaster.

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

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

#### **2.211 Termination for Cause**

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

(b) In the event that this Contract is terminated for cause, in addition to any legal remedies otherwise available to the State by law or equity, Contractor shall be responsible for all costs incurred by the State in terminating this Contract, including but not limited to, State administrative costs, reasonable attorneys' fees and court costs, and any reasonable additional costs the State may incur to procure the Services/Deliverables required by this Contract from other sources. Re-procurement costs shall not be considered by the parties to



be consequential, indirect or incidental damages, and shall not be excluded by any other terms otherwise included in this Contract, provided such costs are not in excess of fifty percent (50%) more than the prices for such Service/Deliverables provided under this Contract.

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

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

### **2.212 Termination for Convenience**

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

### **2.213 Non-Appropriation**

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

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

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



### **2.214 Criminal Conviction**

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

### **2.215 Approvals Rescinded**

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

### **2.216 Rights and Obligations Upon Termination**

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

(b) In the event the State terminates this Contract prior to its expiration for its own convenience, the State shall pay Contractor for all charges due for Services provided prior to the date of termination and, if applicable, as a separate item of payment pursuant to this Contract, for Work In Process, on a percentage of completion basis at the level of completion determined by the State. All completed or partially completed Deliverables prepared by Contractor pursuant to this Contract shall, at the option of the State and to the extent consistent with the terms and conditions hereof, become the State's property, and Contractor shall be entitled to receive equitable fair compensation for such Deliverables prior to passing ownership to the State. 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 one hundred eighty (180) 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 thirty (30) days), then Contractor may terminate this Contract, in whole or in part based on Statement of Work for cause, as of the date specified in the notice of termination; provided, however, that Contractor must discharge its obligations under **Section 2.250** before any such termination.

## **2.230 Stop Work**

### **2.231 Stop Work Orders**

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

### **2.232 Cancellation or Expiration of Stop Work Order**

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

### **2.233 Allowance of Contractor Costs**

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

## **2.240 Reserved**

## **2.250 Dispute Resolution**

### **2.251 In General**

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

### **2.252 Informal Dispute Resolution**

(a) All operational disputes between the parties shall be resolved under the Contract Management procedures developed pursuant to **Section 2.100**. If the parties are unable to resolve any disputes after



compliance with such processes, the parties shall meet with the Director of Purchasing Operations, DMB, or designee, for the purpose of attempting to resolve such dispute without the need for formal legal proceedings, as follows:

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

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

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

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

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

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

**2.253 Injunctive Relief**

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

**2.254 Continued Performance**

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

**2.260 Federal and State Contract Requirements**

**2.261 Nondiscrimination**

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

**2.262 Unfair Labor Practices**



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

### **2.263 Workplace Safety and Discriminatory Harassment**

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

## **2.270 Litigation**

### **2.271 Disclosure of Litigation**

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

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

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

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

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

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

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



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

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

### **2.272 Governing Law**

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

### **2.273 Compliance with Laws**

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

### **2.274 Jurisdiction**

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

## **2.280 Environmental Provision**

### **2.281 Environmental Provision**

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

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

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



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

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

## **2.290 General**

### **2.291 Amendments**

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

### **2.292 Assignment**

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

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

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

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

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

### **2.294 Headings**



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

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

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

**2.296 Notices**

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

State of Michigan  
**Purchasing Operations**  
Attention: Steve Motz  
PO Box 30026  
530 West Allegan  
Lansing, Michigan 48909

with a copy to:  
State of Michigan  
**Department of Information Technology**  
Attention: Mark Lawrence  
525 W. Allegan St. Atrium Level  
Constitution Hall  
Lansing, Michigan 48909

Contractor:  
**First Data Government Solutions**  
11311 Cornell Park Drive, Suite 300  
Cincinnati, OH 45242

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**

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

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



### **2.306 Prevailing Wage**

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

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

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

### **2.307 Call Center Disclosure**

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**

The State allows State employees to purchase from this Contract. Unless otherwise stated, it is the responsibility of the Contractor to ensure that the State employee is an authorized purchaser before extending the Contract pricing.

The Contractor will supply Contract Services and Deliverables 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 State employee on a direct and individual basis.

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

## **2.330 Federal Grant Requirements**

### **2.331 Federal Grant Requirements**

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

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

[http://straylight.law.cornell.edu/uscode/html/uscode31/usc\\_sec\\_31\\_00001352----000-.html](http://straylight.law.cornell.edu/uscode/html/uscode31/usc_sec_31_00001352----000-.html)

[http://www.archives.gov/federal\\_register/codification/executive\\_order/12549.html](http://www.archives.gov/federal_register/codification/executive_order/12549.html)

[http://www.archives.gov/federal\\_register/executive\\_orders/pdf/12869.pdf](http://www.archives.gov/federal_register/executive_orders/pdf/12869.pdf)

<http://www.epls.gov/epl/servlet/EPLSearchMain/1>

RESERVED - Exhibit A  
Approved Subcontractors

RESERVED - Exhibit B  
Approved Hardware

RESERVED - Exhibit C  
Approved Software

RESERVED - Exhibit D  
Binding Commitments



CONTRACT #071B720068

**Attachment 1 - SAS70 Audit Report**  
(Included as a separate attachment in contract file)

**Attachment 2 - Change Control Procedures**  
Formal Change Control Procedures will be provided by 1/1/2007



**Attachment 3 - CEPAS Incident Report**

Michigan Department of Treasury  
4350 (12-05)

**CEPAS Incident Report**

**PART 1: CONTACT INFORMATION**

1. Name	2. Incident Report Number
3. Office Telephone Number	4. Emergency Contact Number
5. E-mail Address	6. Fax Number
7. Alternate Contact Name	8. Alternate's Telephone Number

**PART 2: INCIDENT INFORMATION**

Incident Category <input type="checkbox"/> Downtime <input type="checkbox"/> Settlement <input type="checkbox"/> Duplicates <input type="checkbox"/> Other: _____	
Date of Incident	Date Incident Discovered
Incident Location	
Involved Parties/Entities	
Description of Incident	
Date of Initial Report	

**PART 3: INCIDENT RESOLUTION**

Action Taken
Incident Impact
Post Incident Recommendations
Date of Final Report

**Attachment 4 - 3rd Party Software**