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 TECHNOLOGY, MANAGEMENT AND BUDGET **May 27, 2010**
PURCHASING OPERATIONS
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

CHANGE NOTICE NO. 3
TO
CONTRACT NO. 071B7200092
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR **Automated License Systems, Inc.** **3055 Lebanon Road, Suite 2301** **Nashville, TN 37214** **denny.bennett@als-xtn.com**	TELEPHONE (615) 263-4257 x2162 **Denny Bennett** VENDOR NUMBER/MAIL CODE BUYER/CA (517) 241-1916 **Jim Wilson**
Contract Compliance Inspector: Denise Gruben (517) 335-4036 **Management of Point-of-Sale Equipment and Inventory Items - DNR**	
CONTRACT PERIOD: From: **January 17, 2007** To: **May 1, 2011**	
TERMS **N/A**	SHIPMENT **N/A**
F.O.B. **N/A**	SHIPPED FROM **N/A**
MINIMUM DELIVERY REQUIREMENTS **N/A**	

NATURE OF CHANGE(S):

Effective May 1, 2010, this Contract is hereby EXTENDED to May 1, 2011.

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

AUTHORITY/REASON:

Per agency request (PRF dated 1/21/10), and DTMB/Purchasing Operations' approval.

CURRENT AUTHORIZED SPEND LIMIT REMAINS: $630,000.00

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

February 5, 2010

CHANGE NOTICE NO. 2
TO
CONTRACT NO. 071B7200092
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR	TELEPHONE (615) 263-4257 x2162 **Denny Bennett**
Automated License Systems, Inc. **3055 Lebanon Road, Suite 2301** **Nashville, TN 37214** **denny.bennett@als-xtn.com**	VENDOR NUMBER/MAIL CODE BUYER/CA (517) 241-1916 **Jim Wilson**
Contract Compliance Inspector: Denise Gruben (517) 335-4036 **Management of Point-of-Sale Equipment and Inventory Items - DNR**	
CONTRACT PERIOD: From: **January 17, 2007** To: **May 1, 2010**	
TERMS **N/A**	SHIPMENT **N/A**
F.O.B. **N/A**	SHIPPED FROM **N/A**
MINIMUM DELIVERY REQUIREMENTS **N/A**	

NATURE OF CHANGE(S):

Effective February 5, 2010, this Contract is hereby EXTENDED to May 1, 2010, in order to obtain Ad Board approval of extension to March 1, 2012.

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

AUTHORITY/REASON:

Per Contractor/agency agreement and DMB/Purchasing Operations' approval.

CURRENT AUTHORIZED SPEND LIMIT REMAINS: $630,000.00

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

November 6, 2007

CHANGE NOTICE NO. 1
TO
CONTRACT NO. 071B7200092
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR	TELEPHONE (615) 263-4257 x2162 **Denny Bennett**
Automated License Systems, Inc. **3055 Lebanon Road, Suite 2301** **Nashville, TN 37214** **denny.bennett@als-xtn.com**	VENDOR NUMBER/MAIL CODE BUYER/CA (517) 241-1916 **Jim Wilson**
Contract Compliance Inspector: Kristina Squibb (517) 373-7987 **Management of Point-of-Sale Equipment and Inventory Items - DNR**	
CONTRACT PERIOD: From: **January 17, 2007** To: **January 16, 2010**	
TERMS **N/A**	SHIPMENT **N/A**
F.O.B. **N/A**	SHIPPED FROM **N/A**
MINIMUM DELIVERY REQUIREMENTS **N/A**	

NATURE OF CHANGE(S):

Effective immediately, the attached "Amended Pricing Addendum" is hereby incorporated into this Contract. All other terms, conditions, specifications, and pricing remain unchanged.

AUTHORITY/REASON:

Per Contractor/agency agreement and DMB/Purchasing Operations.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: $630,000.00

9) Repairs pricing, per listed item:
Verifone Omni 3740: **$55.00** per unit (not incl. modem power module or printer mechanism)
Zebra 2844 printer o/t printhead: **$75.00** per unit
Zebra 2844 printhead: **$120.00** per unit
Verifone 100 keyboards: **$25.00** per unit

VENDOR INVOICE NOTE: Repairs pricing is subject to change upon Vendor documentation of increased repair cost by submission of repair center invoice pricing.

Pricing for miscellaneous services:

1) Pricing for warehousing: **$ 11.25** per pallet per month.
2) Special pallet pricing: $_____ (each additional pallet @ $_____)
3) Other: none

FOR THE VENDOR:	FOR THE STATE:
Automated License Systems, Inc.	_____
	Signature
_____	_____
Authorized Agent Signature	Name/Title
Ernest D. Bennett, III	_____
Authorized Agent (Print or Type)	Division
_____	_____
Date	Date

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

January 12, 2007

NOTICE
TO
CONTRACT NO. 071B7200092
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR **Automated License Systems, Inc.** **3055 Lebanon Road, Suite 2301** **Nashville, TN 37214** **denny.bennett@als-xtn.com**	TELEPHONE (615) 263-4257 x2162 **Denny Bennett** VENDOR NUMBER/MAIL CODE BUYER/CA (517) 241-1916 **Jim Wilson**
Contract Compliance Inspector: Kristina Squibb (517) 373-7987 **Management of Point-of-Sale Equipment and Inventory Items - DNR**	
CONTRACT PERIOD: From: **January 17, 2007** To: **January 16, 2010**	
TERMS **N/A**	SHIPMENT **N/A**
F.O.B. **N/A**	SHIPPED FROM **N/A**
MINIMUM DELIVERY REQUIREMENTS **N/A**	

The terms and conditions of this Contract are those of ITB #071I6200314, this Contract Agreement and the vendor's quote dated 8/10/2006. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.

Estimated Contract Value: $630,000.00

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

CONTRACT NO. 071B7200092
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR	TELEPHONE (615) 263-4257 x2162 **Denny Bennett**
Automated License Systems, Inc. **3055 Lebanon Road, Suite 2301** **Nashville, TN 37214** **denny.bennett@als-xtn.com**	VENDOR NUMBER/MAIL CODE BUYER/CA (517) 241-1916 **Jim Wilson**

Contract Compliance Inspector: Kristina Squibb (517) 373-7987
Management of Point-of-Sale Equipment and Inventory Items - DNR

CONTRACT PERIOD:	From: **January 17, 2007**	To: **January 16, 2010**
TERMS **N/A**	SHIPMENT **N/A**	
F.O.B. **N/A**	SHIPPED FROM **N/A**	
MINIMUM DELIVERY REQUIREMENTS **N/A**		

MISCELLANEOUS INFORMATION:

The terms and conditions of this Contract are those of ITB #071I6200314, this Contract Agreement and the vendor's quote dated 8/10/2006. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.

Estimated Contract Value: $630,000.00

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the ITB No. 071I6200314. Orders for delivery may be issued directly by the Department of Natural Resources through the issuance of a Purchase Order Form.

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

FOR THE VENDOR:	**FOR THE STATE:**
Automated License Systems, Inc. Firm Name	Signature
Authorized Agent Signature	**Melissa Castro, CPPB, Buyer Manager** Name/Title
Authorized Agent (Print or Type)	**Services Division, Purchasing Operations** Division
Date	Date

STATE OF MICHIGAN
Department of Management and Budget
Purchasing Operations

Contract No. 071B7200092
Management of Point-of-Sale Equipment and Inventory Items
Michigan Department of Natural Resources

Buyer Name: Jim Wilson
Telephone Number: 517-241-1916
E-Mail Address: wilsonj4@michigan.gov

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Article 1 – Statement of Work (SOW)

1.0 Project Identification

1.001 PROJECT REQUEST

The purpose of this contract for warehousing, mailing services, equipment maintenance, inventorying of forms and merchandise for the Michigan Department of Natural Resources (MDNR) Retail Sales System.

1.002 BACKGROUND

MDNR is in need of warehousing, management of retail sales system equipment and agents' supplies, inventorying of forms and merchandise, and mailing services. This office is: the Office of Land and Facilities (OLAF) Retail Sales System (RSS) which is responsible for the management of 1,700 license agents with annual sales of nearly five million hunting and fishing licenses, outdoor recreational vehicle and snowmobile permits from a point-of sale (POS) system. There are approximately 1,700 licensing agents selling MDNR licenses. For the RSS, the contractor will be responsible for the deployment and retrieval of the Zebra TLP2844 printer, Verifone Omni 3740 terminal, and Verifone 100 keyboard, accessories.

1.1 Scope of Work and Deliverables

1.101 IN SCOPE

Contractor will provide warehousing, mailing services, equipment maintenance, inventorying of forms and merchandise for the Michigan Department of Natural Resources (MDNR) Retail Sales System.

Task 1 – OLAF-RSS equipment and license stock:

The RSS has multiple components, as described below:

1) Inventory/Deployment:

   a) RSS inventory will be maintained at contractor's insured warehouse

   b) Online ordering through a secure web site

   c) Same day deployments

   d) Packaging of return air bill, instructions and other items required by RSS

   e) Terminals will be downloaded with current software and unique terminal information

   f) Overlay and help desk sticker will be applied

   g) Shipping per RSS instructions which includes new agent setup, replacement Equipment deployments, accessory deployments, and agent supply Fulfillment

   h) Equipment to be inventoried and deployed: Omni 3740 terminals, VeriFone 100 keyboards, Zebra TLP 2844 printer, and other equipment as agreed to by contractor and RSS

2) Retrieval, Clean, Test, and Repair:

a) Contractor will issue a retrieval request via courier (UPS, etc.) for broken equipment. Courier (UPS, etc.) will go to the agent site and retrieve the broken equipment within three (3) business days

b) Clean, test, and repair of retrieved Verifone 100 keyboards
   1) Clean outside and inside of the component.
   2) Test keyboard with the Omni 3740 for proper performance. If no trouble is found, place keyboard back in RSS inventory.
   3) Repair and retest (if applicable)

c) Retrieved Omni 3740 will be uploaded with RSS before maintenance – weekly

d) Clean and test retrieved Zebra printers

   1) Clean outside and inside of the component to remove any dirt or stickers. Check for and replace broken parts. Load thermal paper.
   2) Test, at a minimum, run diagnostic test to perform a gap sensor adjustment on each printer. Connect to an Omni 3740 and "sell" and print a license to check for proper alignment. Other testing needs will be added to ensure equipment is performing properly. If no trouble is found during testing, place the printer back in RSS inventory. If repairs are needed the contractor will send the printer to the selected RSS repair vendor.

e) Clean and test retrieved Omni 3740 terminals

   1) Clean outside and inside of the component to remove any dirt or stickers. Clean heads. If broken, replace keypad and lens.
   2) Test, at a minimum, run diagnostic test. Connect to a printer and "sell" and print a license. Other testing needs will be added to ensure equipment is performing properly. If no trouble is found during testing, place the terminal back in RSS inventory. If repairs are needed the contractor will send the terminal to the selected RSS repair vendor.

f) Warehousing of equipment after cleaned, tested, and repaired

g) Contractor will facilitate the repair process for the printers and terminals, including covering outbound and inbound freight, tracking equipment sent and received, maintain records of all repairs and warranties.

h) RSS will be responsible for any repair charges billed by these vendors

i) Repaired equipment will be returned to vendor and placed into RSS inventory

j) Retrieval reporting will be available for RSS via real-time link

3) Reporting:

a) Real-time reporting via the internet of all equipment deployed, retrieved and unretrieved

b) Real-time reporting via the internet of all inventory status

c) RSS may request a physical count of all inventory or one item at any time

4) Supplemental Equipment Purchases. RSS may want to purchase accessories, (if available from the contractor). RSS is requesting a price list for the following POS items:

a) Telephone line cord
b) 3740 thermal receipt paper
c) 3740 power pack with A/C cord
d) Zebra 2844 cardboard core
e) Verifone Omni 3740 template
f) Verifone 100 connector cable
g) Zebra 2844 serial cable
h) Zebra 2844 power cable with A/C cord

RSS will be invoiced by contractor for any accessories purchased on next invoice after purchase. RSS is not obligated to purchase accessories from contractor.

5) Refurbished Equipment Purchases. RSS may also want to purchase refurbished equipment from the contractor, (if available). The following is a list of equipment RSS may wish to purchase:

a) Verifone 100 keyboard
b) Omni 3740 terminal
c) Zebra TLP 2844 printer

RSS will be invoiced by contractor for any refurbished equipment purchased on the next invoice after purchase. RSS is not obligated to purchase refurbished equipment from the contractor.

6) RSS inventory items. Quantities of RSS inventoried items will vary throughout the calendar year. "Peak" inventory months for items to be received into the contractor's warehouse, are identified in the table below.

Description	Quantity on Hand	Peak Inventory
2005 Canada Goose Guide	16550	Mid-August
Agent Manuals	2	
Agent Posters	481	
Antlerless Deer Guide	18500	Mid-June
Bear Hunting Guide	0	April 1
Cash Drawer	1	
DNR Backers	31550	October
Elk Guide	0	June 1
Fall Turkey Guide	38725	Mid-June
Fishing Guide	152950	Mid-February
Hunting/Trapping Guide	203500	Mid-July
Keyboard Cable	45	
License Holder	78	
License Stock	4606	Mid-February

Michigan Off Road Vehicle Guide	0	
Omni 3740 Help Desk Decal	1588	
Omni 3740 KB Con Cable	82	
Omni 3740 Overlay	472	
Omni 3740 Paper Roll	4999	
Omni 3740 Power Pack	67	
Pink Doc Return Envelopes	20280	
Public Hunting on Private Land	34800	Mid-October
Reserved Waterfowl	20700	Mid-July
Snowmobile Regulations		
Spring Wild Turkey Guide	56525	Mid-December
Taxidermist Specimen ID Tag	72000	
Telco Line Cord	93	
Trout & Salmon Guide	20000	Mid-February
Waterfowl Hunting Guide	28500	Mid-August
Zebra 4 Notch CBD Spindle	965	
Zebra 4 Notch Thermal Ribbon	2676	
Zebra A/C Cord	123	
Zebra Power Pack	130	
Zebra Serial Cable	95	
Zebra 2844 Printer	111	
Verifone 100 Keyboard	116	
Omni 3740 Terminal	110	

Guides are packaged in bundles of 50. The Fishing Guide, Trout & Salmon Guide, and the Hunting/Trapping Guide are delivered on skids, approximately 30 cartons/skid. The Fishing Guide and Trout & Salmon Guide for the 2006-07 season will be delivered on approximately 200 skids.

1.102 OUT OF SCOPE

Upon award of a contract, it will be the responsibility of MDNR to arrange and pay for the transportation of all inventory items warehoused at the current contractor's facility to the contractor awarded this contract.

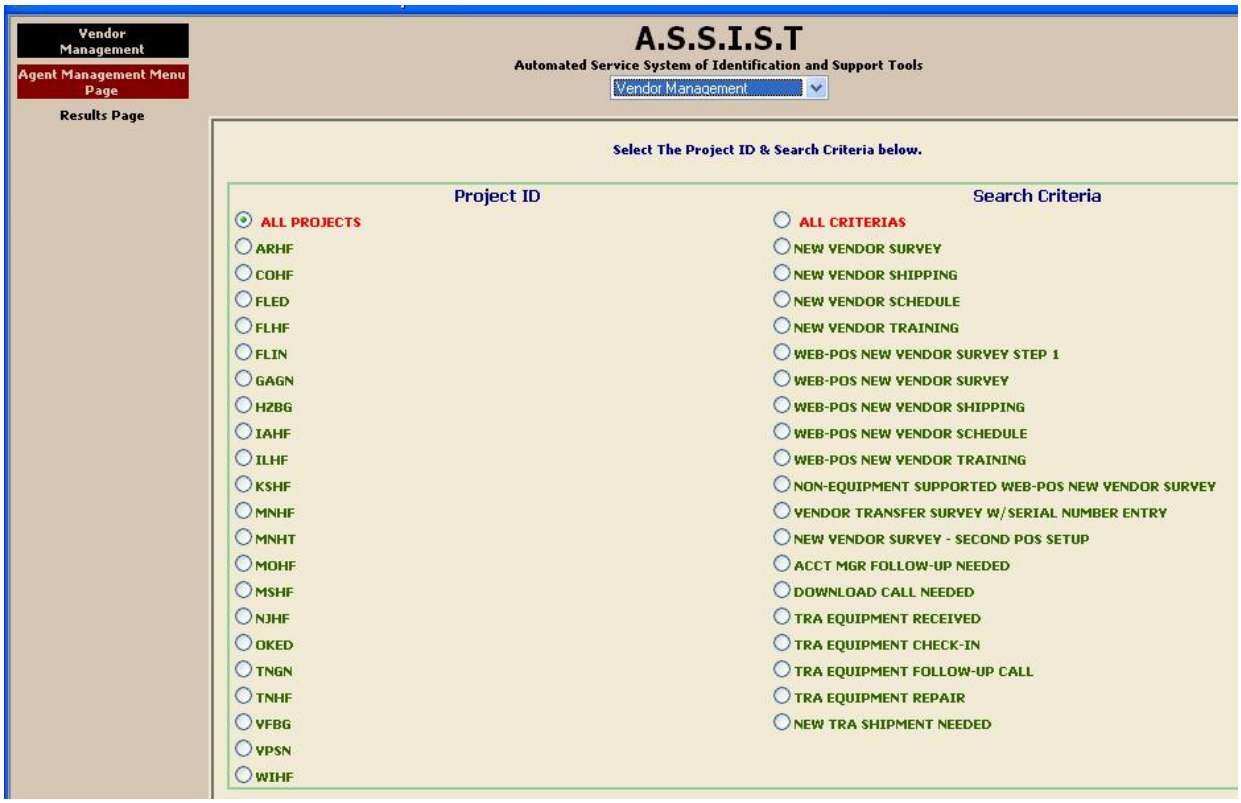
1.103 ENVIRONMENT

Contractor will establish password protected web page(s) for RSS, PRD, and WLD to access and review inventory information and online ordering. Contractor will download RSS terminals with current software and unique terminal information. Real-time reporting via the internet of all RSS equipment deployed, retrieved, and unretrieved, as well as real-time reporting via the internet of RSS inventory status.

Contractor Response to Task:

ALS' equipment service component was established in 1995 and utilizes ALS' own Automated Service System of Identification and Support Tools (ASSIST). ASSIST is ALS' custom, proprietary software for all aspects of agent management and support.

This tool was created in-house by ALS employees, and is maintained by ALS resources. ASSIST allows them to access and update agent information. ASSIST components involve agent preparation, training and installation; agent management; Call Center support services to agents; terminal software management; and all equipment services. Because ALS is involved in end-to-end agent support in other projects, ASSIST is the tool that integrates agent management with other system services. For example, where ALS is responsible for training agents, ASSIST automatically notifies the appropriate staff resource when an agent location has completed a predecessor step and is ready for the next action to be initiated, and includes scripts and checklists to ensure consistent and timely delivery of services at every stage. At ALS, a Help Desk call that results in a request for equipment replacement automatically notifies the Distribution Center of the required shipment.

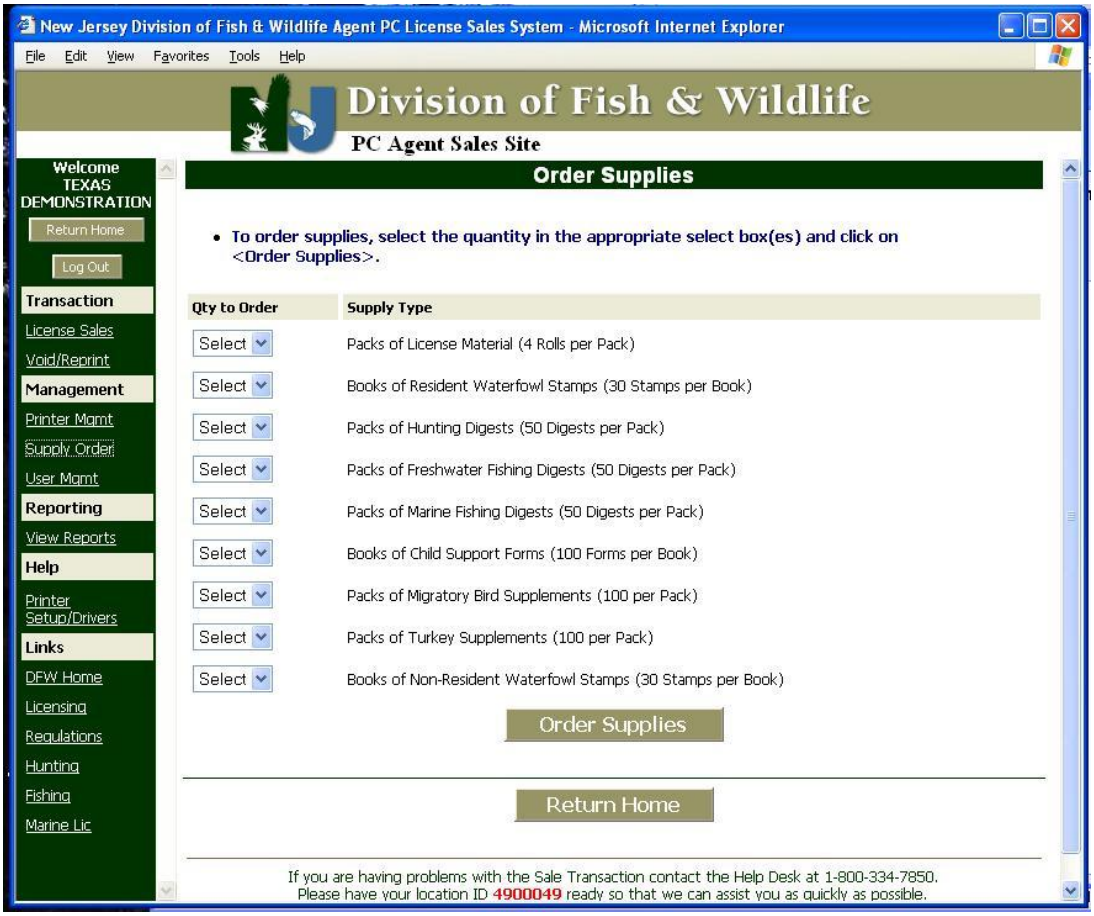


*Note: **TRA** is "terminal replacement authorization," a generic term ALS uses for the **request to ship** <u>any</u> equipment or part.*

ASSIST is a real-time web-based tool that will be customized for MDNR access to the appropriate functions and reports as required by this RFP.

ALS will integrate in to ASSIST the necessary on-line ordering features that are required for RSS, PRD and WLD to create work orders and otherwise communicate with ALS. ALS currently offers several levels of supply ordering.

Below is a screen that shows how in some projects agents are allowed to order supplies directly from ALS via a secure ALS website. Agents of any type (selling with VeriFone equipment or PC application) can log in with a password and user ID that is designated to allow the user to order supplies. In the New Jersey example below, agents are ordering the license stock directly from ALS and the other items will be fulfilled by DFW. On a daily basis ALS forwards to DFW the order information for all items other than license stock.



Business rules can be applied to the orders, such as no more than one order per location per day (to prevent one clerk from ordering and the clerk on the next shift placing the same order). Because ALS has access to real time sales information in other projects, other rules can also be applied based on sales volume or other criteria. In all cases, the goal is to manage inventory in such a way as to service customers through agents while reducing waste, containing costs and assisting agents.

Per RFP requirements, ALS pricing assumes that MDNR does not wish to offer direct ordering by agents, although this type of service is available.

NOTE: Although ALS has a peripheral relationship with RSS, it does not involve the tasks related to this RFP. ALS entered into a Sublicense and Master Services Agreement ("Sublicense") with Electronic Data Systems Corporation and EDS Information Services, LLC (collectively, "EDS"), on or about August 22, 2005, to obtain a sublicense to the Retail Sales System ("RSS") to which EDS holds a license from the State of Michigan, Department of Natural Resources ("MDNR"). Pursuant to the Sublicense, ALS is permitted to use, as is or as modified by either ALS or EDS, the RSS for third party customers of ALS consisting of other state wildlife licensing agencies, in connection with ALS' services to such other agencies as an operator of automated sales of fish and game licenses and privileges and related functions. While ALS did not contract directly with the State of Michigan or MDNR in this instance or in any other, ALS is aware that EDS was required to enter into an amendment to its license agreement with the State of Michigan and MDNR in order to obtain consent to enter into the Sublicense with ALS according to its terms.

ALS entered into the above agreement to utilize the accounting and EFT functionality and to integrate this component into our own existing processes and services which were already operating the other key components of a full-service license system like RSS. ALS' proposal does not involve using any RSS functionality.

1.104 WORK AND DELIVERABLE

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

<u>Task 1 – OLAF-RSS equipment and license stock</u>

The RSS has multiple tasks for the contractor to provide, as described below:

1) Inventory
   a) Contractor's inventory system must include a direct internet link, which provides fast, real time accurate data about deployments, retrievals, and inventory
   b) RSS will supply contractor with an initial inventory of license agent equipment and accessory items to be deployed to their agents as directed by RSS. This inventory will consist of the following:

      1) VeriFone 100 keyboard
      2) Omni 3740 terminal
      3) Zebra TLP 2844 printers
      4) Power supplies for Zebra TLP 2844 printer, & Omni 3740 cables
      5) Additional accessory and reference materials

   c) RSS inventory will be maintained at contractor's insured warehouse
   d) When broken equipment is retrieved from agents, it will be completely cleaned, tested, and repaired and placed into inventory for future deployment
   e) Inventory levels need to be updated as each order is processed
   f) RSS can request a physical count of any one item or all items in inventory at any time
   g) Vendor will dispose of out dated inventory with RSS approval
   h) If the cost of repair exceeds the cost of the equipment, contractor may scrap the equipment with RSS approval
   i) RSS will be able to add new agents on contractor's internet web site.
   j) RSS will be able to delete terminated agents on contractor's internet website without losing any history on this agent

2) Deployment of Agent Equipment and Accessories

a) Deployment Procedures:

1) Direct internet link which provides fast, accurate data about deployments of new or replacement equipment, cleaning, testing, and repair of retrieved equipment, status of supply orders, and status of retrievals.
2) Equipment will be shipped the same day as the order is received, except weekends and holidays.
3) Download of customer-specified terminal applications:
    a) Current software
    b) Terminal number
    c) Sales Outlet number
    d) Baud Rate
    e) Validation key
    f) Primary phone number
    g) Secondary phone number
    h) Dial prefix when applicable
    i) Help desk sticker application. Writing unique terminal number on help desk sticker at deployment
4) Overlay application
5) Vendor will update software changes for terminals as they occur, as instructed by RSS
6) Deployment of accessory materials with the ability to order more than one item.
7) Shipment as specified by client
    a) Serialized equipment ship next day air
    b) Non-serialized parts and accessories ship ground

b) New Agent Deployment

1) RSS will add new agent information on contractor's website
2) RSS may send new agent deployment orders via internet link 24 hours a day, 7 days per week
3) Equipment will be shipped the same day as the order is received, except weekends and holidays
4) When contractor receives deployment instructions, they will remove the appropriate equipment and accessories from the RSS inventory
5) Terminals will be downloaded with the current software via telephone line
6) For new agents, contractor will deploy equipment, accessories and all reference materials needed, as supplied by RSS, ordering from a secure website set-up by contractor
7) The contractor and RSS will work together to determine a system of packing codes to identify what agent setup equipment and/or supplies need to be shipped. For example, "New Agent Kit" packing code would indicate all 3 serialized point-of-sale components along with the power packs, serial cables, overlay, and help desk sticker should be sent to the license agent.
8) Download of unique customer-specified terminal information:
    a) Terminal number
    b) Sales Outlet number
    c) Baud Rate
    d) Validation key
    e) Primary phone number
    f) Secondary phone number
    g) Dial prefix when applicable

h) Help desk sticker application. Writing unique terminal number on help desk sticker before deployment

9) Overlay application

3) New Agent Deployment Reporting

a) Real-time reports of all deployments processed are available via RSS internet link to contractor. The reports will contain, as a minimum, the following information:

1) agent terminal number
2) ticket/transaction number
3) model type
4) serial number
5) time of deployment
6) method of deployment
7) tracking out number

4) Replacement Equipment Deployment

a) Contractor will deploy replacement equipment to RSS agents who have experienced equipment failure
b) Equipment and other essential materials will be supplied by RSS and sent by contractor. Along with the deployment of replacement equipment, contractor will also initiate the retrieval of broken equipment
c) RSS will order a replacement deployment and retrieval from contractor's secure site on the contractor's internet server, as well as view reports.
d) Contractor will customize the replacement and retrieval screen with an easy-to-use order form. This form will provide drop-down screens to select the appropriate equipment and accessories to be deployed and retrieved.
e) RSS may send deployment orders via internet link 24 hours a day, 7 days per week
f) Equipment will be shipped the same day as the order is received, except weekends and holidays.
g) When contractor receives deployment instructions, they will remove the appropriate equipment and accessories from the RSS inventory.
h) Terminals will be downloaded with software via telephone line and customer-specified terminal data before shipping.
i) Contractor will include a return air bill and instructions for the agent to package their broken equipment and await courier pickup.

5) Replacement Equipment Deployment Reporting

a) Real-time reports of all replacement orders processed are available via RSS internet link to contractor. The reports will contain, as a minimum, the following information:

1) agent terminal number
2) ticket/transaction number
3) model type
4) serial number
5) time of deployment
6) method of deployment
7) tracking out and in air bill number

6) Accessory Deployments

a) Accessory deployments will include point-of-sale equipment, power supplies, cables, spindles. Other accessories may be added.

b) The ability to order more than one accessory item at a time

c) At specified inventory levels, contractor may reorder and bill RSS for accessory items, should RSS choose to reorder these items from contractor, per RSS approval

d) Accessory items will be provided by RSS and may include:

1) Zebra cardboard spindle
2) Zebra printer cable
3) Zebra printer power supply
4) Zebra printer A/C cord
5) 7' telephone line cord
6) VeriFone keyboard converter cable
7) Omni 3740 power supply
8) Omni 3740 overlays
9) Omni 3740 Helpdesk decal

7) Retrievals

a) Retrieval of Broken Agent Equipment

1) Contractor will issue a retrieval request via courier for the broken equipment
2) A courier will go to the agent site and retrieve the broken equipment within 3 business days. If this retrieval attempt is unsuccessful, contractor will call the agent to let them know a courier will be coming again for the broken equipment and find out if there will be any problems returning the equipment
3) If the second retrieval attempt fails, contractor will call the agent once more, and perform a third pickup attempt
4) If equipment remains unretrieved after three attempts, contractor will notify RSS by internet report
5) A real-time report will be available for RSS via internet link showing all equipment retrieved and unretrieved
6) If at any time a piece of equipment comes in after 30 days, contractor will remove the equipment from the unretrieved status report, and notify RSS of the retrieval.

b) Processing Retrieved Equipment

1) Retrieved equipment will be updated on contractor's web site as soon as it is received in. This enables RSS to have an accurate count of equipment in the field.
2) Retrieved equipment will be cleaned, tested, and repaired (if applicable) and placed into inventory for deployment
3) All serialized equipment will be clean, tested, and repaired when broken
4) Contractor will clean, test and repair Verifone 100 keyboard
5) Contractor will first upload all retrieved terminals to access any license sales prior to clean, test and repair
6) Contractor will clean and test terminal. Contractor will ship to RSS authorized repair facility
7) Contractor will clean and test printer. Contractor will ship to RSS authorized repair facility
8) Contractor will cover outbound and inbound freight to authorized repair facility. RSS will be responsible for any repair charges billed by authorized repair facility
9) Contractor will manage all aspects of this operation, including tracking equipment sent and received. Contractor will supply information to RSS on the status of printers and terminals upon request.

Additionally, contractor will maintain records of all repairs and warranties and will advise RSS if a printer or terminal is covered under warranty. The repaired units will be returned to contractor and placed into inventory

c) Retrieval Reporting

1) Retrieval reporting will be available for RSS via real-time link. The reports will contain, as a minimum, the following information:
   a) agent terminal number
   b) ticket/transaction number
   c) model type, serial number
   d) call tag issue date
   e) call tag tracking number
   f) # of retrieval attempts and dates
   g) date retrieved

8) License Agent Supplies Fulfillment

a) Contractor will provide fulfillment services for RSS, described as any and all consumable items that are warehoused at contractor that do not support the functionality of point-of-sale hardware used in RSS' automated license system. These items will include (but not limited to):
   1) 3740 thermal receipt paper
   2) license stock
   3) Zebra thermal ribbon
   4) user manuals, hunting and fishing guides, permits, tags and non-point-of-sale items
   5) license holders

b) At times, RSS may request vendor to do a mass distribution to all license agents of various items such as license stock, thermal ribbon, receipt paper

c) At specified inventory levels, contractor may reorder and bill RSS for supply items, should RSS choose to reorder these items from contractor, per RSS approval.

d) All boxes and packaging equipment will be supplied by contractor.

9) Supplemental Purchases From Contractor

a) Accessory Purchases

1) RSS may wish to purchase accessories from contractor, if contractor makes them available

2) Please provide a price list for the following items.
   a) Telephone line cord
   b) 3740 thermal receipt paper
   c) 3740 power pack with A/C cord
   d) Zebra 2844 cardboard core
   e) Verifone Omni 3740 template
   f) Verifone 100 connector cable
   g) Zebra 2844 serial cable
   h) Zebra 2844 power cable with A/C cord

3) RSS will be billed by contractor for any accessories purchased on next invoice after purchase

4) RSS is not obligated to purchase accessories from contractor

b) Refurbished Equipment Purchases

1) RSS may also wish to purchase refurbished equipment from contractor, if contractor makes them available

2) Equipment RSS may wish to purchase:
   a) Verifone 100 keyboard
   b) Omni 3740 terminal
   c) Zebra TLP 2844 printer
3) RSS will be billed by contractor for any refurbished equipment purchased on next invoice after purchase
4) RSS is not obligated to purchase refurbished equipment from contractor

10) RSS inventory items. Quantities of RSS inventoried items will vary throughout the calendar year. "Peak" inventory months for items to be received into the contractor's warehouse, are identified in the table below.

Description	Quantity on Hand	Peak Inventory
2005 Canada Goose Guide	16550	Mid-August
Agent Manuals	2	
Agent Posters	481	
Antlerless Deer Guide	18500	Mid-June
Bear Hunting Guide	0	April 1
Cash Drawer	1	
DNR Backers	31550	October
Elk Guide	0	June 1
Fall Turkey Guide	38725	Mid-June
Fishing Guide	152950	Mid-February
Hunting/Trapping Guide	203500	Mid-July
Keyboard Cable	45	
License Holder	78	
License Stock	4606	Mid-February
Michigan Off Road Vehicle Guide	0	
Omni 3740 Help Desk Decal	1588	
Omni 3740 KB Con Cable	82	
Omni 3740 Overlay	472	
Omni 3740 Paper Roll	4999	
Omni 3740 Power Pack	67	
Pink Doc Return Envelopes	20280	
Public Hunting on Private Land	34800	Mid-October
Reserved Waterfowl	20700	Mid-July
Snowmobile Regulations		
Spring Wild Turkey Guide	56525	Mid-December
Taxidermist Specimen ID Tag	72000	
Telco Line Cord	93	
Trout & Salmon Guide	20000	Mid-February
Waterfowl Hunting Guide	28500	Mid-August
Zebra 4 Notch CBD Spindle	965	
Zebra 4 Notch Thermal Ribbon	2676	
Zebra A/C Cord	123	
Zebra Power Pack	130	
Zebra Serial Cable	95	

Zebra 2844 Printer	111
Verifone 100 Keyboard	116
Omni 3740 Terminal	110

Guides are packaged in bundles of 50. The Fishing Guide, Trout & Salmon Guide, and the Hunting/Trapping Guide are delivered on skids, approximately 30 cartons/skid. The Fishing Guide and Trout & Salmon Guide for the 2006-07 season will be delivered on approximately 200 skids.

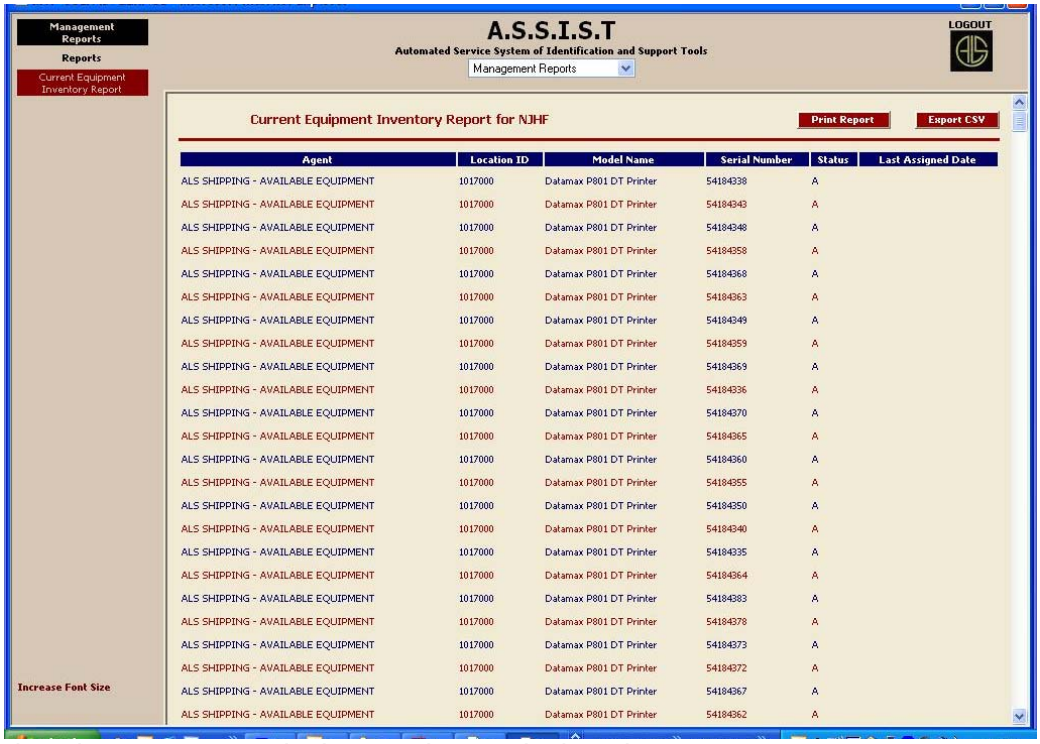
Contractor Response to Task:

ALS will comply with requirements.

ALS is currently performing similar **inventory management and deployment tasks** for over 1,300 hunting and fishing agents nationwide. Our internal processes and procedures were initially designed specifically for the tasks listed, and are already accomplished following the methods required. Because ALS deployment is focused solely on the same audience as required by this RFP, we offer a proven, low-risk solution.

ALS professional services are designed to accept initial shipment, inventory and data enter/barcode hardware, pre-load and set terminal parameters, apply overlays and stickers, custom package each type of solution configuration, arrange shipments and deploy on a required schedule.

Included within ASSIST is an equipment management module that provides a basis for uniquely identifying each piece of equipment by location. The ASSIST database contains all information on each piece of equipment. A sample report is shown below.



Agent	Location ID	Model Name	Serial Number	Status	Last Assigned Date
ALS SHIPPING - AVAILABLE EQUIPMENT	1017000	Datamax P801 DT Printer	54184338	A	
ALS SHIPPING - AVAILABLE EQUIPMENT	1017000	Datamax P801 DT Printer	54184343	A	
ALS SHIPPING - AVAILABLE EQUIPMENT	1017000	Datamax P801 DT Printer	54184348	A	
ALS SHIPPING - AVAILABLE EQUIPMENT	1017000	Datamax P801 DT Printer	54184358	A	
ALS SHIPPING - AVAILABLE EQUIPMENT	1017000	Datamax P801 DT Printer	54184368	A	
ALS SHIPPING - AVAILABLE EQUIPMENT	1017000	Datamax P801 DT Printer	54184363	A	
ALS SHIPPING - AVAILABLE EQUIPMENT	1017000	Datamax P801 DT Printer	54184349	A	
ALS SHIPPING - AVAILABLE EQUIPMENT	1017000	Datamax P801 DT Printer	54184359	A	
ALS SHIPPING - AVAILABLE EQUIPMENT	1017000	Datamax P801 DT Printer	54184369	A	
ALS SHIPPING - AVAILABLE EQUIPMENT	1017000	Datamax P801 DT Printer	54184336	A	
ALS SHIPPING - AVAILABLE EQUIPMENT	1017000	Datamax P801 DT Printer	54184370	A	
ALS SHIPPING - AVAILABLE EQUIPMENT	1017000	Datamax P801 DT Printer	54184365	A	
ALS SHIPPING - AVAILABLE EQUIPMENT	1017000	Datamax P801 DT Printer	54184360	A	
ALS SHIPPING - AVAILABLE EQUIPMENT	1017000	Datamax P801 DT Printer	54184355	A	
ALS SHIPPING - AVAILABLE EQUIPMENT	1017000	Datamax P801 DT Printer	54184350	A	
ALS SHIPPING - AVAILABLE EQUIPMENT	1017000	Datamax P801 DT Printer	54184340	A	
ALS SHIPPING - AVAILABLE EQUIPMENT	1017000	Datamax P801 DT Printer	54184335	A	
ALS SHIPPING - AVAILABLE EQUIPMENT	1017000	Datamax P801 DT Printer	54184364	A	
ALS SHIPPING - AVAILABLE EQUIPMENT	1017000	Datamax P801 DT Printer	54184383	A	
ALS SHIPPING - AVAILABLE EQUIPMENT	1017000	Datamax P801 DT Printer	54184378	A	
ALS SHIPPING - AVAILABLE EQUIPMENT	1017000	Datamax P801 DT Printer	54184373	A	
ALS SHIPPING - AVAILABLE EQUIPMENT	1017000	Datamax P801 DT Printer	54184372	A	
ALS SHIPPING - AVAILABLE EQUIPMENT	1017000	Datamax P801 DT Printer	54184367	A	
ALS SHIPPING - AVAILABLE EQUIPMENT	1017000	Datamax P801 DT Printer	54184362	A	

In this example, location ID 1017000 is the warehouse designation.

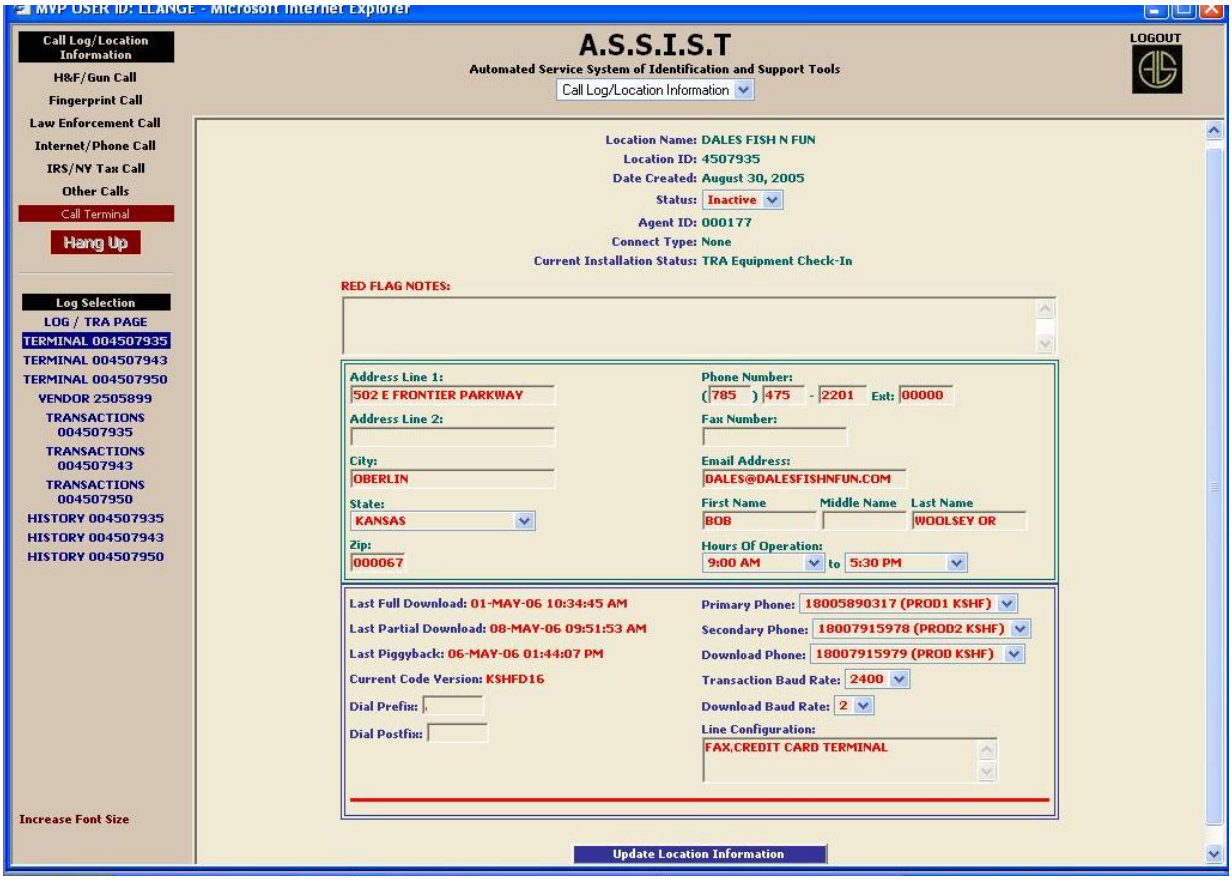
Within the warehouse, each project has a variety of undeployed items to be managed. For example:

NJHF INVENTORY	TOTALS
Kits (new)*	0
Kits (used)*	1
Omni3740	112
VFIP801	155
VFIkybd	124
P801 to PC interface cables	20
User Guides	37
Template Overlays	288
P801Interface Cable (p/n 07751-01 rev A)	118
Kybd Interface Cable (p/n 07632-01 rev B)	131
P801 Valeron Rolls	901
Helpdesk Sticker	668
Stacker	124
USB cable 6FT	12

*** Equipment and Collaterals, boxed and ready for shipment**

When the Distribution Center receives orders to deploying to a **new agent**, equipment is prepared for shipping. The most current software version is downloaded into the terminal. For initial shipping, a master terminal is downloaded (via dial-up) and individual terminals are then download via back to back from the master.

The database contains data about the location, terminal and its characteristics -- manufacturer, version, type, serial numbers, model numbers, software version, installation date, maintenance history, repair history and related information. ASSIST is continually updated so a complete agent and equipment record is maintained. An agent record for one of our projects looks like this:



In ALS' other projects, new agents are prepared in a series of steps completed by the client agency and the ALS Help Desk. We will create a secure screen and simple data entry method for MDNR to similarly initiate the deployment of a new agent site.

Monday through Friday, if the deployment request is placed by 3:00 PM Central Time, it is shipped that day. For incidents reported after 3:00 PM or on a weekend or holiday, equipment is shipped the next business day. Equipment is shipped priority overnight, for delivery the next business day. Shipping status is tracked online through software provided by ALS' preferred carrier.

ALS employees at our Distribution Center specialize in **testing, cleaning and repairing returned equipment**. We have extensive and specific experience with MDNR agent equipment - we support over 5,000 Omni 3740/50 terminals, thousands of keyboards and a variety of license printer types.

In 2005, our staff shipped 5,615 replacement orders (includes terminals, printers and all accessories) and so far in 2006 we have completed 2,168 replacement shipments to hunting and fishing license agents. Replacement equipment is shipped priority overnight, for delivery the next business day. Shipping status is tracked online through software provided by ALS' preferred carrier. Monday through Friday, if the replacement order is received by 3:00 PM Central Time, it is shipped that day. For incidents reported after 3:00 PM or on a weekend or holiday, equipment is shipped the next business day.

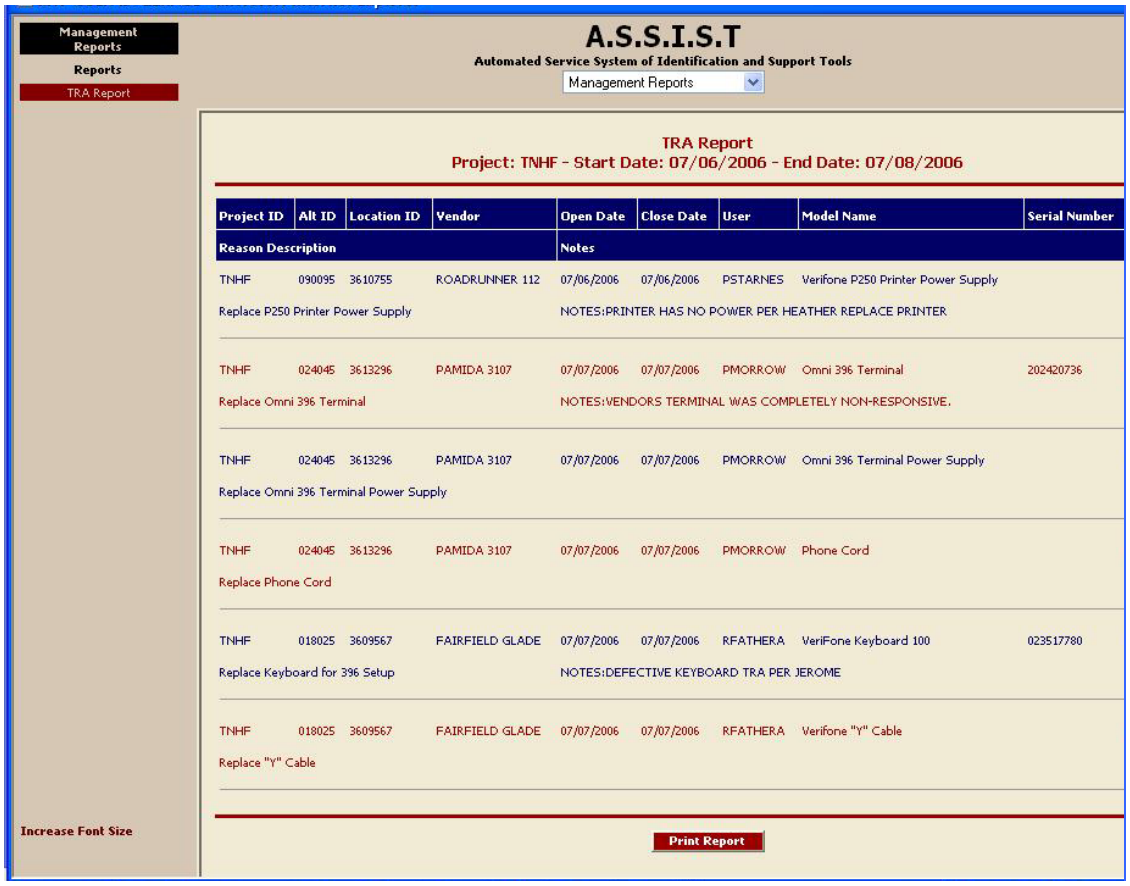
When replacement equipment is sent to an agent, it includes a pre-printed return label ("call tag") so the agent can easily return the inoperable equipment in the box. that held the replacement. ALS maintains special access to the carrier's database to monitor deliveries and track the location of all equipment.

When the faulty hardware is received at ALS' equipment depot, a trained technician carefully checks the terminal memory to be sure all stored transactions (completed in store-and-forward mode) were sent to the host prior to the malfunction. Unsent transactions can be retrieved from terminal memory and forwarded to RSS to avoid lost sales and incomplete central data.

The technician consults ASSIST for the reason equipment was returned and reviews the past history of this item. Diagnostics begin with trying to duplicate the problem. A standardized protocol and checklist for each type of equipment is followed to insure consistent and reliable repair services. Downloads on returned equipment are completed by dial-up. Depending on the nature of the problem, and the age and warranty status of the equipment, it may be cleaned and repaired on site or forwarded to a repair facility (to be provided by MDNR). When equipment can no longer be successfully repaired for return to the spare pool, it is removed from active inventory and reported.

ASSIST helps identify terminals with frequent or recurring problems. Trends are analyzed in order to provide MDNR with information for continuous improvement in agent and customer service. Repeated problems are reported to clients and the equipment manufacturers to help them identify trends or flaws in a product or product line.

In ASSIST, management can request summaries of replacement requests by project and date range. An example appears below.



Management Reports
Reports
TRA Report

A.S.S.I.S.T
Automated Service System of Identification and Support Tools
Management Reports

TRA Report
Project: TNHF - Start Date: 07/06/2006 - End Date: 07/08/2006

Project ID	Alt ID	Location ID	Vendor	Open Date	Close Date	User	Model Name	Serial Number
Reason Description				Notes				
TNHF	090095	3610755	ROADRUNNER 112	07/06/2006	07/06/2006	PSTARNES	Verifone P250 Printer Power Supply	
Replace P250 Printer Power Supply				NOTES:PRINTER HAS NO POWER PER HEATHER REPLACE PRINTER				
TNHF	024045	3613296	PAMIDA 3107	07/07/2006	07/07/2006	PMORROW	Omni 396 Terminal	202420736
Replace Omni 396 Terminal				NOTES:VENDORS TERMINAL WAS COMPLETELY NON-RESPONSIVE.				
TNHF	024045	3613296	PAMIDA 3107	07/07/2006	07/07/2006	PMORROW	Omni 396 Terminal Power Supply	
Replace Omni 396 Terminal Power Supply								
TNHF	024045	3613296	PAMIDA 3107	07/07/2006	07/07/2006	PMORROW	Phone Cord	
Replace Phone Cord								
TNHF	018025	3609567	FAIRFIELD GLADE	07/07/2006	07/07/2006	RFATHERA	VeriFone Keyboard 100	023517780
Replace Keyboard for 396 Setup				NOTES:DEFECTIVE KEYBOARD TRA PER JEROME				
TNHF	018025	3609567	FAIRFIELD GLADE	07/07/2006	07/07/2006	RFATHERA	Verifone "Y" Cable	
Replace "Y" Cable								

Increase Font Size

Print Report

From our experience and data, ALS has been able to analyze incident reports in other projects to quantify our success rate at maintaining license sales equipment in the field. For example, during the 9 peak sales days last year for Wisconsin DNR, agents processed 404,400 transactions with 1,544 full equipment sets (VeriFone terminals and license printers) deployed throughout the state. During these 9 days, ALS processed equipment replacement requests for only 11 VeriFone terminals, 1 keyboard and 24 P801 printers. While this is a very small amount, it may be higher than average since Wisconsin DNR uses the P801 in thermal transfer mode with a film ribbon which requires more agent assistance than units in direct thermal mode (no ribbon). Of course, in this project, ALS is not only responsible for equipment maintenance services, but also provides the Help Desk and agent training, as well as procurement of supplies used in the equipment – all to insure the highest levels of performance and lowest risk of failure at any point.

In 2005, ALS shipped over 21,743 supply kits in response to **orders for additional supplies**. ALS also can mass distribute to all agents, such as at the beginning of a new license year or stock changeover. However, based on information provided in Amendment 2, ALS' bid has assumed that initial supplies for a mass change in are shipped directly from the stock

Supply order requests that ALS receives by 7:00 AM Central Time are shipped the same day, and shipped the next business day if received after this time. Orders received Saturday, Sunday or on a holiday are shipped the next business day. ALS generally ships supplies via standard ground delivery because they are received within 1-3 days. ALS will accommodate any other shipping method MDNR chooses to fund.

Opportunities for Efficiencies:

Contractor is encouraged to include in their proposal suggestions for efficiencies to the warehousing, management, and fulfillment services described. Examples for efficiency suggestions are: 1) eliminating the possibility of more than one order being placed for the same license agent in one day; 2) eliminating the possibility of a license agent placing orders for publications or supplies directly to the contractor. (License agents must order through MDNR).

Bidder Response to Task:

AGENT SUPPLIES

ALS pioneered the supply "kit" concept. A standardized supply kit contains prepackaged, proportional amounts of applicable consumables and accessories, such as license/receipt stock, license printer ribbon, instruction sheets. For example, two kit profiles are itemized below.

SAMPLE KIT DESCRIPTIONS

Quantity	Description
4	Custom Valeron (Single Ply) License Stock Rolls for P801
6	Direct Thermal Receipt Rolls for Omni3300
1	P801 Instruction Sheet
1	Omni 3300 Instruction Sheet
4	"time to reorder" labels
2	Alcohol pads

Quantity	Description
4	(Yellow) Pressure Sensitive Direct Thermal License Stock for P801
3	Direct Thermal Receipt Rolls for Omni3300
1	Spindle for Omni3300
1	Alcohol prep pad

ALS develops kit proportions based on experience with actual usage, and adjusts kits as necessary based on actual usage. Of course individual items remain available upon request. Our experience has shown that pre-packaged kits such as these help agents and ALS manage supplies and inventory storage, and contain costs. ALS would welcome the opportunity to assist MDNR in creating kits; we will also continue MDNR's current fulfillment method for individual supply items sent in the quantities approved by MDNR.

CONTRACTOR SELECTION FOR SHIPPING

In other contracts, ALS is allowed to select the shipper based on the indicated delivery standards provided by the client. In this RFP, MDNR has indicated a desire to designate the shipper. ALS believes that due to the volume of shipping we undertake with our preferred carrier(s), we can offer MDNR very competitive rates that will not increase your shipping costs. ALS proposes that with MDNR approval, ALS be granted the ability to select and use our preferred carrier(s) in order to gain the efficiencies of using a single carrier. With ALS able to control the selection of carrier, these efficiencies can be significant, including standardized tracking, labeling, data transfer, faster issue resolution, etc.

CONTRACTOR SELECTION FOR REPAIRS

Similar to the efficiency suggest above, ALS would like to discuss with MDNR the list of preferred repair facilities. Because ALS handles such a large volume of equipment similar to that utilized by MDNR agents, it is possible that the repair facilities ALS currently uses (if different from MDNR's) could offer lower costs or better service. In other contracts, ALS is responsible for all costs related to equipment repairs, so we carefully screen the repair facilities used and continually monitor their performance in order to control costs and insure that equipment is properly repaired to serve agents and sell licenses.

ORDER DUPLICATION

ALS currently imposes business rules on agent supply orders since they are processes in real time and placed directly by the agent. If MDNR agent supply orders are not placed in real time, it would be possible for us to apply rules to MDNR's real time orders to ALS, if desired. For example, a common rule in other projects is not to allow more than one order for a supply per location per day. This prevents the situation where one clerk places an order and the next clerk who notices the need also places the same order. Through ALS, MDNR has access to real time information on orders already placed, so it would be possible for ALS to apply rules to alert MDNR of duplicate orders or other error messages that could avoid waste. The goal is to manage inventory to service customers through agents while containing costs and helping agents avoid over-ordering (which creates storage issues at agent locations).

INTEGRATED SERVICES

By providing integrated equipment support services, ALS reduces overhead and expenses that result in separate management and coordination of efforts required to provide these services. Our comprehensive service offering is completely managed by one experienced resource who has direct control over the complete team, providing seamless results to our clients. The custom automation tool we have established manages the data associated with the equipment management and presents it to the users in straightforward work-flow-oriented fashion, providing exactly what is necessary and requiring input of only what is necessary for each step throughout the process.

1.2 Roles and Responsibilities

1.201 CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES

Contractor will provide, as appropriate, all staff, and materials required to fulfill the tasks described in Section 1.104.

Contractor Response to Task:

Acknowledged and will comply with RFP requirements. ALS does not expect to utilize any subcontractors in the delivery of services described. See 1B.202 Staffing for full response.

1.202 STATE STAFF, ROLES, AND RESPONSIBILITIES

MDNR-PRD program manager:
Harold Herta
MDNR-Parks and Recreation Division
P.O. Box 30257
Lansing, MI 48909
Email: hertah@michigan.gov
Telephone: 517.335.5695

MDNR-PRD program contact:
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MDNR-Parks and Recreation Division
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Lansing, MI 48909
Email: lischalv@michigan.gov
Telephone: 517.241.3367

MDNR-WLD program manager:
Raymond Rustem
MDNR-Wildlife Division
Natural Heritage Program Supervisor
P.O. Box 30444
Lansing, MI 48909
Email: rustemr@michigan.gov
Telephone: 517.373.2457

MDNR-WLD program contact:
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MDNR-Wildlife Division
Natural Heritage Program
P.O. Box 30444
Lansing, MI 48909
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Telephone: 517.335.1720

MDNR-OLAF RSS program manager:
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Retail Sales System
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Lansing, MI 48909
Email: pemblew@michigan.gov
Telephone: 517.241.3725

MDNR-OLAF RSS program contact:
Sandra Miller
Office of Land and Facilities
Retails Sales System – Help Desk
P.O. Box 30181
Lansing, MI 48909
Email: millersa@michigan.gov
Telephone: 517.241.2421

MDNR-Procurement Services Contract Compliance Inspector:
Kristina A. Squibb
Procurement Services
P.O. 30028
Lansing, MI 48909
Email: squibbk@michigan.gov
Telephone: 517.373.7987

1.203 OTHER ROLES AND RESPONSIBILITIES (RESERVED)

1.3 Project Plan

1.301 PROJECT PLAN MANAGEMENT

Contractor should produce a project plan showing a detailed proposed plan, which describes the warehouse facilities where the MDNR inventory items and equipment will be housed. In the plan, describe in detail inventory reporting, retrieval and mailing services, the transition timeline for physically warehousing all items, and setting up website pages for MDNR use. If you currently use a web based site for your customers, describe the services available on this site and how the system works. This plan should be returned with contractor's bid proposal.

Bidder Response to Task:

See Article 1, Attachment E for an example of a project plan related to aspects of Task 1 equipment and supply deployment. A separate but similar type of plan will be developed for the inventory and shipping services related to the Task 1.

ALS web-based software (ASSIST) will be customized to provide the entry and reporting needs of the RFP. This tool is fully discussed in response to 1.104 Task 1.

1.302 REPORTS

RSS: Contractor will establish a secure web page, which RSS will be able to access and review the following information:

1) Real-time reports of all deployments processed are available via RSS internet link to contractor. The reports will contain, as a minimum, the following information:

a) agent terminal number
b) ticket/transaction number
c) model type
d) serial number
e) time of deployment
f) method of deployment
g) tracking out number

2) Real-time reports of all replacement orders processed are available via RSS internet link to contractor. The reports will contain, as a minimum, the following information:

a) agent terminal number
b) ticket/transaction number
c) model type
d) serial number
e) time of deployment
f) method of deployment
g) tracking out and in air bill number

3) Retrieval reporting will be available for via real-time link. The reports will contain, as a minimum, the following information:

a) agent terminal number
b) ticket/transaction number
c) model type, serial number
d) call tag issue date
e) call tag tracking number
f) # of retrieval attempts and dates
g) date retrieved

4) Real-time reporting via the internet of all inventory status.

5) RSS may request a physical count of all inventory or one item at any time.

Contractor Response to Task:

ALS will comply. From over 10 years of experience specific to hunting and fishing license inventory management for multiple state agencies, ALS has evolved a highly-functional reporting system. The core of ASSIST is internal information management and performance reporting. ALS can make aspects of ASSIST accessible to clients. We have extensive internal resources dedicated to internal reporting tools and web development to insure the reporting needs of all parties are successfully met.

1.4 Project Management

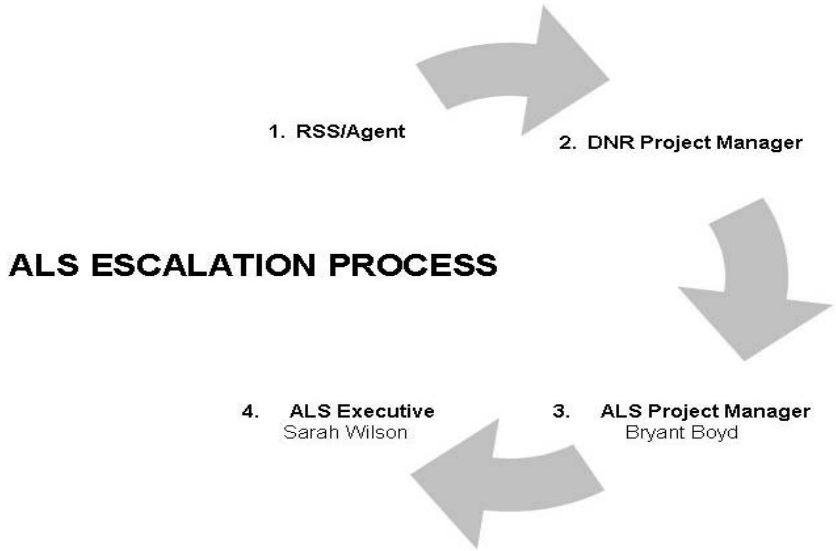
1.401 ISSUE MANAGEMENT

The contractor should define the issue escalation process to include whether escalation will be based on age, severity, budget impact, etc. and where the escalation levels are. The contractor should identify and explain any deviations from the proposed issue management process. If there is not an issue management process, then the contractor should propose a standard issue management process for managing the project as part of its bid response. The contractor should identify the issue management process to be utilized for this project, including responsible parties, phone numbers, email addresses if relevant, processes and how appropriate parties will be apprised of progress.

Contractor Response to Task:

The risks that are likely to lead to issues and incidents are discussed in 1.402.

Because ALS uses no subcontractors, the escalation process for problems is direct, as depicted in the diagram below. Issues and incidents identified by ALS start at step 3. Issues and incidentsidentified by MDNR or agents begin at step 1. The following assumes an incident related to equipment deployment or supplies.



Of course, system problems would be escalated to the appropriate ALS Operations personnel if an issue is related to web service, data, etc.

Related to larger issues that may be software related, ALS tracks software issues using specific internal change management tools. If an issue arises related to ALS web-based products used by MDNR, ALS follows documented change management and version control for all process and procedure changes to the system. We use our integrated issue tracking and source control tools to effectively manage the development and testing of any change resulting from a reported issue. We developed our own Issue Tracking System to better fit the needs of the license automation business and we have recently upgraded our software version control software tool to Rational's ClearCase solution to associate software issues being worked on to versions of applications, with bug tracking and testing interfaces for a comprehensive result. ALS has doubled its testing staff in order to speed delivery of high quality, error-free changes.

ALS specializes in responsive client service. MDNR staff will have cell phone numbers of project personnel and executives in case an issue arises that needs immediate attention. ALS employees are also company owners so they are highly motivated to keep clients and their customers satisfied.

1.402 RISK MANAGEMENT

Contractor should identify the risk management process to be utilized for this contract, including responsible parties, telephone numbers, email addresses if relevant, and processes.

Contractor Response to Task:

Risks related to this project fall into four main categories and involve areas that are both within and not within ALS' (or MDNR's) control.

<u>Order Input</u>
Risks: accuracy, volume
<u>Order Output</u>
Risks: accuracy, volume, performance, supply/replacement availability, quality of service (repairs)
<u>Delivery</u>
Risks: schedule, accuracy, carrier variables, external factors (weather, etc.)

System
Risks: automated tracking, data, access, availability, security; reporting; accounting, invoicing
Facility
Risks: security, damage, space availability

Alternative processing plans to avoid and/or respond to potential risks will be coordinated with MDNR to insure fast response to any outage. Communication plans will include designated notification alerts to and from the appropriate MDNR and ALS staff Our risk management is based largely upon over 10 years of experience handling our own equipment as well as that owned by the state. MDNR can be assured of the highest quality service when your inventory and supplies are handled in the same manner, side by side with ALS' own.

1.403 CHANGE MANAGEMENT

In the case of any change desired or requested by either MDNR or the contractor, the contractor will prepare and submit to MDNR a Change Proposal form describing any proposed change to the contract. The Change Proposal shall include a detailed analysis of the effect the proposed change will have on the contract, as it relates to cost and delivery. The contractor will not perform any of the changes until a Change Notice issued by DMB-Purchasing Operations has been received.

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

ALS acknowledges and will comply. See brief discussion of change management above at 1.401 Issue Management (since issues and changes are tracked together).

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.

Criteria for acceptance will be based upon receipt of services specified in Sections 1.104 and 1.302 above.

ALS acknowledges and will comply.

1.502 FINAL ACCEPTANCE (RESERVED)

1.6 Compensation and Payment

1.601 COMPENSATION AND PAYMENT

All prices/rates quoted in the contractor's response to this proposal will be firm for the duration of the contract. No price changes will be permitted. MDNR will be billed monthly for services rendered/orders processed. Contractor's proposal should include pricing structure for items to be warehoused and shipped. (See Article 1, Attachment A).

ALS acknowledges and will comply. Per 4.051, ALS states that the proposal itself remains valid at least one hundred twenty (120) days from the due date for responses to this RFP.

1.7 Additional Terms and Conditions Specific to this SOW

1.701 ADDITIONAL TERMS AND CONDITIONS TO THIS SOW (RESERVED)

Article 1, Attachment A
Pricing

Option A – Retail Sales System:

1) New License Agent Setup: Price per setup @ **$ 15.00** each, plus freight

2) Fulfillment of License Dealer Supplies: Price per pick @ **$ 1.00** each, plus freight

3) Replacement equipment deployment and retrieval:
Price per deployment @ **$ 12.00** each, plus overnight freight
Price for retrieval (total of 3 attempts) @ **$ 12.00** /retrieval, plus freight

4) Accessory deployments: Per order @ **$ 2.00**, plus freight

5) Clean and testing of license dealer terminals: Price per unit @ **$ 12.00** /each

6) Clean and testing of license dealer printers: Price per unit @ **$ 12.00** / each

7) Accessories pricing: if contractor has the following accessories available, pricing for each item is requested:
Telephone line cord: **$ 1.00** /each
3740 thermal receipt paper: **$ 1.00** per ___roll__
3740 power pack with A/C cord: **$ 25.00** /each
Zebra 2844 cardboard core: $_NOTE 1_____/each
Verifone Omni 3740 template: $ NOTE 2___/each
Verifone 100 connector cable: **$ 6.00** /each
Zebra 2844 serial cable: $_NOTE 1_____/each
Zebra 2844 power cable with a/C cord: $__NOTE 1_____/each

8) Refurbished equipment purchases: if contractor has the following refurbished equipment available, pricing for each item is requested:

Verifone 100 keyboard: **$ 40.00** /each
Omni 3740 terminal: $ __NOTE_1__/each
Zebra TLP 2844 printer: $_NOTE_1_____/each

NOTE 1: ALS does not currently have an inventory of these items but if ALS is awarded and the items are available, ALS will acquire these items in order to service MDNR.

NOTE 2: ALS currently supplies these and will gladly offer to MDNR. However, price is dependant on quantity and we are unable to quote a price without an estimated quantity to be procured. We are assuming the template is custom-printed with MDNR information..

Article 1, Attachment B

Project Plan

Contractor to Provide

ALS uses Microsoft Project software to plan and execute implementation of each project. For our larger, more complex projects, ALS starts with the standardized basic project plan that includes about 2500 tasks, integrated with precursors and dependencies. Based on requirements, system profile and specific schedule, ALS then adjusts the base plan into a customized version.

A subset of the 2500 task steps directly involve equipment and supplies. A full, detailed training plan will be provided to MDNR upon award, but the sample excerpt shows how some of the deployment tasks appear in an initial deployment situation.

ALS will work closely with MDNR and current provider(s) to enhance the steps necessary for a successful transition.

The following excerpt of a draft Microsoft Project plan is a high level depiction of the tasks and resources anticipated in a new project rollout. It demonstrates ALS' understanding of the complexity of the project, and the issues MDNR faces – all contributing to ALS unique ability to provide this service.

ID	Task Name	Duration	Start	Finish	Resource Names	% Complete
1	**MS Implementation PMSn**	109.5 days	Mon 06/05/06	Fri 11/03/06		0%
2	**ALS SERVICES READINESS**	101.5 days	Mon 06/05/06	Tue 10/24/06		0%
3	**POS ASSET / INVENTORY MANAGEMENT**	101.5 days	Mon 06/05/06	Tue 10/24/06		0%
4	**MS Pilot - Shipping Readiness**	2.13 days	Mon 06/05/06	Wed 06/07/06		0%
5	Notify Shipping of QA Sign Off on Pilot MS application	1 hr	Mon 06/05/06	Mon 06/05/06		0%
6	Assemble the Shipping Kits for Pilot for MS	1 day	Mon 06/05/06	Tue 06/06/06		0%
7	Preload VeriFone software for Pilot for MS [Asset Mgmt Srvs]	1 day	Tue 06/06/06	Wed 06/07/06		0%
8	Package VeriFone POS Pilot [Asset Mgmt Srvs]	1 day	Mon 06/05/06	Tue 06/06/06		0%
9	MS Pilot Shipping Readiness Complete	0 days	Tue 06/06/06	Tue 06/06/06		0%
10	**MS Full Implementation - Shipping Readiness**	14 days	Wed 10/04/06	Tue 10/24/06		0%
11	Notify Shipping of QA Sign Off on Full Implementation MS application	1 day	Wed 10/04/06	Thu 10/05/06		0%
12	Assemble the Shipping Kits for Full Implementation for MS	6 days	Thu 10/05/06	Fri 10/13/06		0%
13	Preload VeriFone software for Full Implementation for MS [Asset Mgmt Srvs]	6 days	Fri 10/06/06	Mon 10/16/06		0%
14	Package VeriFone POS for Full MS Implementation [Asset Mgmt Srvs]	6 days	Mon 10/16/06	Tue 10/24/06		0%
15	MS Full Implementation Shipping Complete	0 days	Tue 10/24/06	Tue 10/24/06		0%
16	**Set-Up Site Survey**	7 days	Mon 06/05/06	Tue 06/13/06		0%
17	Populate WebPOS Site Survey Text [Assist Srvs]	2 days	Mon 06/05/06	Tue 06/06/06		0%
18	Test WebPOS Site Survey [Assist Srvs]	1 day	Mon 06/05/06	Mon 06/05/06		0%
19	Populate VeriFone POS Site Survey Text [Assist Srvs]	2 days	Mon 06/05/06	Tue 06/06/06		0%
20	Test VeriFone POS Site Survey script	2 days	Wed 06/07/06	Thu 06/08/06		0%
21	**Set-Up Telephone Training Script**	3 days	Fri 06/09/06	Tue 06/13/06		0%
22	Populate WebPOS Training Script	2 days	Fri 06/09/06	Mon 06/12/06		0%
23	Test WebPOS Training Script	1 day	Tue 06/13/06	Tue 06/13/06		0%
24	Populate VeriFone POS Training Script	2 days	Fri 06/09/06	Mon 06/12/06		0%
25	Test VeriFone POS Training script	1 day	Tue 06/13/06	Tue 06/13/06		0%
26	**Vendor MANAGEMENT SERVICES**	109.5 days	Mon 06/05/06	Fri 11/03/06		0%
27	**Vendor Survey Information**	33 days	Mon 06/05/06	Wed 07/19/06		0%
28	Develop Vendor survey and distribute to Vendors [Vendor Mgmt]	10 days	Mon 06/05/06	Fri 06/16/06		0%
29	Submit survey results to ALS regarding sales channels [Vendor Mgmt]	1 day	Mon 06/05/06	Mon 06/05/06		0%
30	Determine Vendor security deposits (amount and process)	2 days	Mon 06/19/06	Tue 06/20/06		0%
31	Mail Vendor surveys	8 hrs	Wed 06/21/06	Wed 06/21/06		0%
32	Analyze and calculate results of Survey	2 wks	Thu 07/06/06	Wed 07/19/06		0%
33	Identify MS pilot locations for WebPOS	2 wks	Tue 07/04/06	Mon 07/17/06		0%
34	Identify MS pilot locations for POS	2 wks	Tue 07/04/06	Mon 07/17/06		0%
35	Vendor Survey Information Complete	0 days	Mon 07/17/06	Mon 07/17/06		0%
36	**Vendor Contract Information**	42 days	Mon 06/05/06	Tue 08/01/06		0%
37	Provide sample contracts to State [Vendor Mgmt]	1 wk	Mon 06/05/06	Fri 06/09/06		0%
38	Create Vendor contract [Vendor Mgmt]	10 days	Mon 06/05/06	Fri 06/16/06		0%
39	Review MS Vendor contract with ALS[Vendor Mgmt]	5 days	Mon 06/19/06	Fri 06/23/06		0%
40	Finalize Vendor contract[Vendor Mgmt]	8 days	Mon 06/19/06	Wed 06/28/06		0%
41	Submit contract to Vendors with deadline date[Vendor Mgmt]	2 days	Thu 06/29/06	Fri 06/30/06		0%
42	Provide contact information for rules and regulations questions [Vendor Mgmt]	2 days	Mon 07/03/06	Tue 07/04/06		0%

Continued on next page

43	Enter Vendor information into system (including address, bank account, etc.)	20 days	Wed 07/05/06	Tue 08/01/06		0%
44	**MS Pilot Vendor Training Process for WebPOS**	45.5 days	Wed 08/02/06	Wed 10/04/06		0%
45	**Enrollment**	0.5 days	Wed 08/02/06	Wed 08/02/06		0%
46	Enter WebPOS PILOT Vendor data[Vendor Mgmt]	4 hrs	Wed 08/02/06	Wed 08/02/06		0%
47	Conduct Site Survey for WebPOS Pilot	5 days	Wed 08/02/06	Wed 08/09/06		0%
48	Issue Vendor credentials for WebPOS (login, etc.)	5 days	Wed 08/02/06	Wed 08/09/06		0%
49	Ship equipment	5 days	Thu 08/10/06	Thu 08/17/06		0%
50	Conduct Scheduling Call for WebPOS	5 days	Wed 08/16/06	Wed 08/23/06		0%
51	Conduct training (of Vendors) for WebPOS	5 days	Wed 08/23/06	Wed 08/30/06		0%
52	Pilot Vendor Training for WebPOS Complete	0 days	Wed 09/13/06	Wed 09/13/06		0%
53	Monitor Pilot activity	15 days	Wed 09/13/06	Wed 10/04/06		0%
54	Obtain state sign off on pilot and approval to roll statewide	0 days	Wed 10/04/06	Wed 10/04/06		0%
55	**MS Pilot Vendor Training Process for VeriFone POS**	45.5 days	Wed 08/02/06	Wed 10/04/06		0%
56	**Enrollment**	0.5 days	Wed 08/02/06	Wed 08/02/06		0%
57	Enter VeriFone PILOT Vendor data[Vendor Mgmt]	4 hrs	Wed 08/02/06	Wed 08/02/06		0%
58	Conduct Site Survey for VeriFone POS Pilot	5 days	Wed 08/02/06	Wed 08/09/06		0%
59	Ship equipment	5 days	Thu 08/10/06	Thu 08/17/06		0%
60	Conduct Scheduling Call for VeriFone POS	5 days	Wed 08/16/06	Wed 08/23/06		0%
61	Conduct training (of Vendors) for VeriFone POS	5 days	Wed 08/23/06	Wed 08/30/06		0%
62	Pilot Vendor Training for VeriFone Complete	0 days	Wed 09/13/06	Wed 09/13/06		0%
63	Monitor Pilot activity	15 days	Wed 09/13/06	Wed 10/04/06		0%
64	Obtain state sign off on pilot and approval to roll statewide	0 days	Wed 10/04/06	Wed 10/04/06		0%
65	**MS Rollout Vendor Training Process for WebPOS**	67.5 days	Wed 08/02/06	Fri 11/03/06		0%
66	**Enrollment**	0.5 days	Wed 08/02/06	Wed 08/02/06		0%
68	Conduct Site Survey for WebPOS	10 days	Wed 09/20/06	Wed 10/04/06		0%
69	Issue Vendor credentials for WebPOS (login, etc.)	10 days	Wed 09/20/06	Wed 10/04/06		0%
70	Ship equipment	10 days	Thu 09/21/06	Thu 10/05/06		0%
71	Conduct Scheduling Call for WebPOS	25 days	Wed 09/27/06	Wed 11/01/06		0%
72	Conduct training (of Vendors) for WebPOS	25 days	Fri 09/29/06	Fri 11/03/06		0%
73	Rollout Vendor Training for WebPOS complete	0 days	Fri 11/03/06	Fri 11/03/06		0%
74	**MS Rollout Vendor Training for VeriFone POS**	67.5 days	Wed 08/02/06	Fri 11/03/06		0%
75	**Enrollment**	0.5 days	Wed 08/02/06	Wed 08/02/06		0%
76	Enter VeriFone POS Vendor data for full implementation [Vendor Mgmt]	4 hrs	Wed 08/02/06	Wed 08/02/06		0%
77	Conduct Site Survey for VeriFone Pos	10 days	Wed 09/20/06	Wed 10/04/06		0%
78	Issue VeriFone POS credentials (i.e. terminal ID, etc.)	10 days	Wed 09/20/06	Wed 10/04/06		0%
79	Ship equipment	10 days	Thu 09/21/06	Thu 10/05/06		0%
80	Conduct Scheduling Call for VeriFone POS	25 days	Wed 09/27/06	Wed 11/01/06		0%
81	Conduct training (of Vendors) for VeriFone POS	25 days	Fri 09/29/06	Fri 11/03/06		0%
82	Rollout Vendor Training for VeriFone POS complete	0 days	Fri 11/03/06	Fri 11/03/06		0%
83	Complete Vendor Management Services [Vendor Mgmt]	0 days	Fri 11/03/06	Fri 11/03/06		0%

Article 2 – General Terms and Conditions

ALS acknowledges and will comply with Article 2.

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

2.012 Attachments and Exhibits

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

2.013 Statements of Work

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

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

(c) Reserved.

(d) The initial Statements of Work, as of the Effective Date, are attached to this Contract.

2.014 Issuing Office

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

Jim Wilson
Purchasing Operations
Department of Management and Budget
Mason Bldg, 2nd Floor
PO Box 30026
Lansing, MI 48909
Wilsonj4@michigan.gov
517-241-1916

2.015 Contract Compliance Inspector

Upon receipt at PO of the properly executed Contract, it is anticipated that the Director of DMB Purchasing Operations, in consultation with Department of Natural Resources, will direct that the person(s) named below, or any other person so designated, be authorized to monitor and coordinate the activities for the Contract on a day-to-day basis during its term. However, monitoring of this Contract implies **no authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions and specifications of such Contract as that authority is retained by the Office of Purchasing Operations**. The Contract Compliance Inspector and the Program Managers for each office are referenced in Section 1.202.

2.016 Project Manager

See Section 1.202.

2.020 Contract Objectives/Scope/Background

2.021 Background (RESERVED)

2.22 Purpose (RESERVED)

2.023 Objectives and Scope (RESERVED)

2.024 Interpretation (RESERVED)

2.025 Form, Function and Utility

If the Contract is for use of more than one State agency and if the Deliverable/Service does not the 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. **Exhibit C** provides an organization chart showing the roles of certain Key Personnel, if any.

(ii) Key Personnel shall be dedicated as defined in **Exhibit C** to the Project for its duration in the applicable Statement of Work with respect to other individuals designated as Key Personnel for that Statement of Work.

(iii) The State will have the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the State of the proposed assignment, will introduce the individual to the appropriate State representatives, and will provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State will provide a written explanation including reasonable detail outlining the reasons for the rejection. Additionally, the State's request shall be based on legitimate, good-faith reasons. Proposed alternative for the individual denied, shall be fully qualified for the position.

(iv) Contractor shall not remove any Key Personnel from their assigned roles or the Contract without the prior written consent of the State. If the Contractor does remove Key Personnel without the prior written consent of the State, it shall be considered an unauthorized removal ("Unauthorized Removal"). It shall not be considered an Unauthorized Removal if Key Personnel must be replaced for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation or for cause termination of the Key Personnel's employment. It shall not be considered an Unauthorized Removal if Key Personnel must be replaced because of promotions or other job movements allowed by Contractor personnel policies or Collective Bargaining Agreement(s) as long as the State receives prior written notice before shadowing occurs and Contractor provides thirty (30) days of shadowing unless parties agree to a different time period. The Contractor with the State shall review any Key Personnel replacements, and appropriate transition planning will be established. Any Unauthorized Removal may be considered by the State to be a material breach of the Contract, in respect of which the State may elect to exercise its rights under **Section 2.210**.

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

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

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

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

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

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

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

2.045 Contractor Responsibility for Personnel

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

2.050 State Standards

2.051 Existing Technology Standards

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

2.052 PM Methodology Standards

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

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

2.053 Adherence to Portal Technology Tools

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

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

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

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

2.054 Acceptable Use Policy

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

2.060 Deliverables

2.061 Ordering

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

2.062 Software- RESERVED

2.063 Hardware-RESERVED

2.064 Equipment to be New and Prohibited Products

(a) Equipment to be New
If applicable, all equipment provided under this Contract by Contractor shall be new where Contractor has knowledge regarding whether the equipment is new or assembled from new or serviceable used parts that are like new in performance or has the option of selecting one or the other. Equipment that is assembled from new or serviceable used parts that are like new in performance is acceptable where Contractor does not have knowledge or the ability to select one or other, unless specifically agreed otherwise in writing by the State.
(b) Prohibited Products
The State will not accept salvage, distressed, outdated or discontinued merchandise. Shipping of such merchandise to any State agency, as a result of an order placed against the Contract, shall be considered default by the Contractor of the terms and conditions of the Contract and may result in cancellation of the Contract by the State. The brand and product number offered for all items shall remain consistent for the term of the Contract, unless Purchasing Operations has approved a change order pursuant to **Section 2.106**.

2.070 Performance

2.071 Performance, In General

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

2.072 Time of Performance

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

2.073 Liquidated Damages

The parties acknowledge that failure to maintain/deliver stock 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 failure to maintain/deliver in respect of which the State does not elect to exercise its rights under **Section 2.191**, the State may assess liquidated damages against Contractor as specified in this Section.
If failure to maintain/deliver occurs, then the State shall be entitled to collect liquidated damages in the amount of $5,000.00 and an additional $100.00 per day for each day Contractor fails to remedy this failure.

2.074 Bankruptcy

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

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

2.075 Time is of the Essence

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

2.076 Service Level Agreements (SLAs) -RESERVED

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) keep the Contract in force and do, either itself or through other parties, whatever Contractor has failed to do, in which event Contractor shall bear any excess expenditure incurred by the State in so doing beyond the Contract price for such Deliverable/Service and will pay the State an additional sum equal to ten percent (10%) of such excess expenditure to cover the State's general expenses provided the State can furnish proof of such general expenses; or (iii) terminate the particular Statement of Work for default, either in whole or in part by notice to Contractor provided Contractor is unable to cure such breach. Notwithstanding the foregoing, the State shall not use, as a basis for exercising its termination rights under this Section, deficiencies discovered in a repeat State Review Period that could reasonably have been discovered during a prior State Review Period.

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

2.085 Process For Approval of Written Deliverables

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

2.086 Process for Approval of Services

The State Review Period for approval of Services is governed by the applicable Statement of Work (failing which the State Review Period, by default, shall be thirty (30) Business Days for Services). The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Service is approved in the form delivered by Contractor or describing any deficiencies that must be corrected prior to approval of the Services (or at the State's election, subsequent to approval of the Service). If the State delivers to Contractor a notice of deficiencies, Contractor will correct the described deficiencies and within thirty (30) Business Days resubmit the Service in a form that shows all revisions made to the original version delivered to the State.

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

2.087 Process for Approval of Physical Deliverables

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. The State may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.

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

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

(c) Services/Deliverables Covered

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

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. Invoices for Services performed on a time and materials basis will show, for each individual, the number of hours of Services performed during the billing period, the billable skill/labor category for such person and the applicable hourly billing rate. Prompt payment by the State is contingent on the Contractor's invoices showing the amount owed by the State minus any holdback amount to be retained by the State in accordance with **Section 2.094**.

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

(b) Taxes (See Section 2.305 and Article 3, Section 3.022-3.024 for additional)
The State is exempt from Federal Excise Tax, State and Local Sales Taxes, and Use Tax with respect to the sale to and use by it of tangible personal property. Such taxes shall not be included in Contract prices as long as the State maintains such exemptions. Copies of all tax exemption certificates shall be supplied to Contractor, if requested.

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

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

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

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

2.093 State Funding Obligation

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

2.094 Holdback-RESERVED

2.095 Electronic Payment Availability

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

2.100 Contract Management

2.101 Contract Management Responsibility

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

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

2.102 Problem and Contract Management Procedures

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

2.103 Reports and Meetings

(a) Reports.

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

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

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

2.104 System Changes

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, Office of Purchasing Operations.

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

2.107 Management Tools

Contractor will use an automated tool for planning, monitoring and tracking the Contract's progress. In addition, Contractor shall use automated project management tools as reasonably necessary to perform the Services, which tools shall include the capability to produce through the end of the Contract: (i) staffing tables with names of personnel assigned to Contract tasks, (ii) project plans showing tasks, subtasks, Deliverables and the resources required and allocated to each (including detailed plans for all Services to be performed within the next sixty (60) days, updated semi-monthly) and (iii) graphs showing critical events, dependencies and decision points during the course of the Contract. Any tool(s) used by Contractor for such purposes must produce information of a type and in a manner and format that will support reporting in compliance with the State's standard to the extent such information is described with reasonable detail in the Statements of Work and to the extent the related work is of sufficient project complexity and duration to warrant such reporting.

2.110 Records and Inspections

2.111a Records and Inspections

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

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

2.161a Ownership

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

Vesting of Rights. With the sole exception of any preexisting licensed works identified in **Exhibit J**, the Contractor shall assign, and upon creation of each Deliverable automatically assigns, to the State, ownership of all United States and international copyrights, trademarks, patents, or other proprietary rights in each and every Deliverable, whether or not registered by the Contractor, insofar as any such Deliverable, by operation of law, may not be considered work made for hire by the Contractor for the State.

From time to time upon State's request, the Contractor and/or its personnel shall confirm such assignment by execution and delivery of the assignments, confirmations of assignment, or other written instruments as the State may request. The State shall have the right to obtain and hold in its own name all copyright, trademark, and patent registrations and other evidence of rights that may be available for Deliverables.

2.162 Source Code Escrow -RESERVED

2.163 Rights in Data

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

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

2.164 Ownership of Materials

All equipment, merchandise, forms, and permits owned by MDNR and/or all equipment, merchandise, forms, and permits purchased during the course of this contract will be owned, and remain the property of, MDNR. In the event of cancellation or at the end of the contract term, the contractor agrees to provide all equipment, merchandise, forms, and permits to MDNR.

2.165 Standard Software

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

2.166 Pre-existing Materials for Custom Software Deliverables

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.

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(m) All written information furnished to the State by or behalf of Contractor in connection with this Contract, including its bid, it 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 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 ten 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 - RESERVED

2.175a DISCLAIMER

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

2.175b 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 warranties 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.

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

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

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

☑ 1. Commercial General Liability with the following minimum coverage:

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

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

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

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

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

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

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

☑ 4. Employers liability insurance with the following minimum limits:

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

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

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

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

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

(b) Subcontractors

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

(c) Certificates of Insurance and Other Requirements

Contractor shall furnish to the Office of Purchasing Operations certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). Before the Contract is signed, and not less than 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.

ALS carries the following insurance coverage and will make the noted change (underlined below) in response to an award from this ITB. All policies listed below are effective 1/19/06 to 1/19/07.

Technology Package/Property – Federal Insurance Company/Chubb Group

Business Personal Property and Leasehold Interest: all locations, replacement cost at estimated valuations; $5,000 deductible. ALS will change estimated valuation at the warehouse location to accommodate the additional valuation of warehoused property for MDNR.

General Liability – General Aggregate, Products/Completed Ops Aggregate, Personal & Advertising Injury, Fire Damage: all $1M limits; medical expense $10,000 limits; bodily injury and property damage deductible $10,000

Professional E & O – Axis Surplus Insurance Company: $1M limit, $25,000 deductible

Commercial Umbrella – Federal Insurance/Chubb: $2M limit, $10,000 retention (deductible)

Worker's Compensation – AIG Insurance: statutory coverage

2.190 Indemnification

2.191 Indemnification

(a) General Indemnification

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

(b) Code Indemnification

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

(c) Employee Indemnification

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

(d) Patent/Copyright Infringement Indemnification

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

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

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

2.192 Continuation of Indemnification Obligations

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

2.193 Indemnification Procedures

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

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

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

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

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

2.200 Limits of Liability and Excusable Failure

2.201 Limits of Liability

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

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

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

2.202 Excusable Failure

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

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

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

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

2.203 Disaster Recovery

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

2.210 Termination/Cancellation by the State

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

2.211 Termination for Cause

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

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

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

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

2.212 Termination for Convenience

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

2.213 Non-Appropriation

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

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

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

2.214 Criminal Conviction

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

2.215 Approvals Rescinded

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

2.216 Rights and Obligations Upon Termination

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

(b) In the event the State terminates this Contract prior to its expiration for its own convenience, the State shall pay Contractor for all charges due for Services provided prior to the date of termination and, if applicable, as a separate item of payment pursuant to this Contract, for Work In Process, on a percentage of completion basis at the level of completion determined by the State. All completed or partially completed Deliverables prepared by Contractor pursuant to this Contract shall, at the option of the State, become the State's property, and Contractor shall be entitled to receive equitable fair compensation for such Deliverables. Regardless of the basis for the termination, the State shall not be obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.

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

2.217 Reservation of Rights

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

2.218 Contractor Transition Responsibilities

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

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

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

(d) 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.

(e) Payment - If the transition results from a termination for any reason, reimbursement shall be governed by the termination provisions of this Contract. If the transition results from expiration, the Contractor will be reimbursed for all reasonable transition costs (i.e. costs incurred within the agreed period after contract expiration that result from transition operations) at the rates specified by **Exhibit D**. The Contractor will prepare an accurate accounting from which the State and Contractor may reconcile all outstanding accounts.

2.219 State Transition Responsibilities

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

(a) Reconciling all accounts between the State and the Contractor;

(b) Completing any pending post-project reviews.

2.220 Termination by Contractor

2.221 Termination by Contractor

If the State materially breaches its obligation to pay Contractor undisputed amounts due and owing under this Contract in accordance with **Section 2.090**, or if the State breaches its other obligations under this Contract to an extent that makes it impossible or commercially impractical for Contractor to perform the Services, and if the State does not cure the breach within the time period specified in a written notice of breach provided to the State by Contractor (such time period not to be less than thirty (30) days), then Contractor may terminate this Contract, in whole or in part based on Statement of Work for cause, as of the date specified in the notice of termination; provided, however, that Contractor must discharge its obligations under **Section 2.250** before any such termination.

2.230 Stop Work

2.231 Stop Work Orders

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

2.232 Cancellation or Expiration of Stop Work Order

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

2.233 Allowance of Contractor Costs

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

2.240 Reserved

2.250 Dispute Resolution

2.251 In General

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

2.252 Informal Dispute Resolution

(a) All operational disputes between the parties shall be resolved under the Contract Management procedures developed pursuant to **Section 2.100**. If the parties are unable to resolve any disputes after compliance with such processes, the parties shall meet with the Director of 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 Office of Purchasing Operations.

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

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

2.272 Governing Law

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

2.273 Compliance with Laws

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

2.274 Jurisdiction

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

2.280 Environmental Provision

2.281 Environmental Provision

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

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

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

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

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

2.290 General

2.291 Amendments

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

2.292 Assignment

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

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

2.293 Entire Contract; Order of Precedence

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

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

2.294 Headings

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

2.295 Relationship of the Parties (Independent Contractor Relationship)

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

2.296 Notices

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

State:
State of Michigan
Purchasing Operations
Attention: Jim Wilson
PO Box 30026
530 West Allegan
Lansing, Michigan 48909

Contractor(s):
Ernest D. (Denny) Bennett III
3055 Lebanon Road, Bldg. II, Suite 2301
Nashville TN 37214

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

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

2.297 Media Releases and Contract Distribution

(a) Media Releases

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

(b) Contract Distribution

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-RESERVED

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- RESERVED

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://www.archives.gov/federal_register/codification/executive_order/12549.html
http://www.archives.gov/federal_register/executive_orders/pdf/12869.pdf
http://www.epls.gov/epls/servlet/EPLSSearchMain/1