

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

March 29, 2011

CHANGE NOTICE NO. 3
TO
CONTRACT NO. 071B7200207
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR Robbins-Gioia, LLC Attn: Gregory Townsend 11 Canal Center Plaza, Suite 200 Alexandria, Virginia 22314 Email: robin.johnston@robbinsgioia.com	TELEPHONE Robin Johnston (703) 739-5624
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-1640 Mark Lawrence
Contract Compliance Inspector: (517) 241-1640, Mark Lawrence Program/Project Management System (P/PMS)– Michigan Department of Transportation	
CONTRACT PERIOD: From: April 1, 2007 To: March 31, 2011	
TERMS <p style="text-align: center;">N/A</p>	SHIPMENT <p style="text-align: center;">N/A</p>
F.O.B. <p style="text-align: center;">N/A</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	
MISCELLANEOUS INFORMATION:	

NATURE OF CHANGE(S):

Effective immediately this contract is hereby **CANCELED** and replaced by **071B1300254**, due to a change in vendor FEIN number. Please note that the buyer for this contract has been changed to **Mark Lawrence** and that will be carried over into the new contract. All remaining funds will be carried forward to the new contract.

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

AUTHORITY/REASON(S):

Per agency and vendor agreement and DTMB/Purchasing Operations approval.

TOTAL REVISED ESTIMATED CONTRACT VALUE: \$0.00

STATE OF MICHIGAN
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET February 25, 2011
 PURCHASING OPERATIONS
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48933

CHANGE NOTICE NO. 2
TO
CONTRACT NO. 071B7200207
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR Robbins-Gioia, LLC Attn: Gregory Townsend 11 Canal Center Plaza, Suite 200 Alexandria, Virginia 22314 Email: robin.johnston@robbinsgioia.com	TELEPHONE Robin Johnston (703) 739-5624
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-3215 Steve Motz
Contract Compliance Inspector: (517) 241-1640, Mark Lawrence Program/Project Management System (P/PMS)– Michigan Department of Transportation	
CONTRACT PERIOD: From: April 1, 2007 To: March 31, 2012	
TERMS <p style="text-align: center;">N/A</p>	SHIPMENT <p style="text-align: center;">N/A</p>
F.O.B. <p style="text-align: center;">N/A</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	
MISCELLANEOUS INFORMATION:	

NATURE OF CHANGE(S):

Effective immediately the contract is hereby **INCREASED** by \$628,060.00. The new contract value is \$2,627,600.00. In addition, this contract is **EXTENDED** utilizing an available contract option, as defined in the original contract language.

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

AUTHORITY/REASON(S):

Per agency and vendor agreement, Administrative Board approval on 3/1/11 and DTMB/Purchasing Operations approval.

INCREASE: \$2,627,600.00

TOTAL REVISED ESTIMATED CONTRACT VALUE: \$2,627,600.00

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

May 7, 2010

CHANGE NOTICE NO. 1
TO
CONTRACT NO. 071B7200207
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR Robbins-Gioia, LLC Attn: Gregory Townsend 11 Canal Center Plaza, Suite 200 Alexandria, Virginia 22314 Email: robin.johnston@robbinsgioia.com	TELEPHONE Robin Johnston (703) 739-5624
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-3215 Steve Motz
Contract Compliance Inspector: (517) 241-1640, Mark Lawrence Program/Project Management System (P/PMS)– Michigan Department of Transportation	
CONTRACT PERIOD: From: April 1, 2007 To: March 31, 2011	
TERMS <p style="text-align: center;">N/A</p>	SHIPMENT <p style="text-align: center;">N/A</p>
F.O.B. <p style="text-align: center;">N/A</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	
MISCELLANEOUS INFORMATION:	

NATURE OF CHANGE(S):

Effective immediately the contract is hereby **INCREASED** by \$253,000.00. The new contract value is \$1,999,540.00. In addition, this contract is **EXTENDED** utilizing an available contract option, as defined in the original contract language.

Please note: the single point of contact for the Contractor is changed from Dana Taylor to Robin Johnston, and the Contract Compliance Inspector for the State has been changed from Cindy Turben to Mark Lawrence.

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

AUTHORITY/REASON(S):

Per State request, Vendor agreement, and Administrative Board approval on May 4, 2010.

INCREASE: \$253,000.00

TOTAL REVISED ESTIMATED CONTRACT VALUE: \$1,999,540.00



February 25, 2010

Mr. Mark Lawrence
Office of Employee & Financial Services
MDIT Contracts
525 W. Allegan
Constitution Hall, 1st Floor, North
Lansing, MI 48913

Subject: Option to Extend

Reference: Contract No. 071B7200207

Dear Mr. Lawrence:

As a follow-up to our telephone conversation today, this letter provides confirmation that Robbins-Gioia agrees with the exercising of the next option of the referenced contract.

Should you have any questions or need additional information regarding this proposal, please contact the undersigned at (703) 739-5628 or via email at Gregory.Townsend@robbinsgioia.com.

Sincerely,
Robbins-Gioia, LLC

//Signed//

Gregory Townsend
Director of Contracts, Civil & Commercial Divisions Contracts

ROBBINSGIOIA

11 Canal Center Plaza, Alexandria, VA 22314 T 800.663.7138 F 703.684.5189

www.robbinsgioia.com

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

March 21, 2007

NOTICE
OF
CONTRACT NO. 071B7200207
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR Robbins-Gioia, LLC Attn: Dana M. Taylor 11 Canal Center Plaza, Suite 200 Alexandria, Virginia 22314 Email: dana.taylor@robbinsgioia.com	TELEPHONE Dana M. Taylor (703) 739-5624
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-3215 Steve Motz
Contract Compliance Inspector: (517) 335-6069, Cindy Turben Program/Project Management System (P/PMS)– Michigan Department of Transportation	
CONTRACT PERIOD: From: April 1, 2007 To: March 31, 2010	
TERMS N/A	SHIPMENT N/A
F.O.B. N/A	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A	
MISCELLANEOUS INFORMATION:	

Estimated Contract Value: \$1,746,540

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. 071B7200207
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR Robbins-Gioia, LLC Attn: Dana M. Taylor 11 Canal Center Plaza, Suite 200 Alexandria, Virginia 22314 Email: dana.taylor@robbinggioia.com	TELEPHONE Dana M. Taylor (703) 739-5624 VENDOR NUMBER/MAIL CODE BUYER/CA (517) 241-3215 Steve Motz
Contract Compliance Inspector: (517) 335-6069, Cindy Turben Program/Project Management System (P/PMS)– Michigan Department of Transportation	
CONTRACT PERIOD: From: April 1, 2007 To: March 31, 2010	
TERMS <p style="text-align: center;">N/A</p>	SHIPMENT <p style="text-align: center;">N/A</p>
F.O.B. <p style="text-align: center;">N/A</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	
MISCELLANEOUS INFORMATION: The terms and conditions of this Contract are attached. Estimated Contract Value: \$1,746,540	

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry and your proposal dated 1/24/2007. A Purchase Order Form will be issued only as the requirements of the State Departments are submitted to Purchasing Operations. Orders for delivery may be issued directly by the State Departments through the issuance of the Purchase Order Form.

FOR THE VENDOR: <p style="text-align: center;">Robbins-Gioia, LLC</p> <p style="text-align: center;">Firm Name</p> <hr/> <p style="text-align: center;">Authorized Agent Signature</p> <hr/> <p style="text-align: center;">Authorized Agent (Print or Type)</p> <hr/> <p style="text-align: center;">Date</p>	FOR THE STATE: <p style="text-align: center;">Signature</p> <p style="text-align: center;">Greg Faremouth, Acting Director</p> <hr/> <p style="text-align: center;">Name</p> <p style="text-align: center;">IT Division</p> <hr/> <p style="text-align: center;">Title</p> <hr/> <p style="text-align: center;">Date</p>
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**STATE OF MICHIGAN
Department of Management and Budget
Purchasing Operations**

Contract No. **071B7200207**
Program/Project Management System (P/PMS)

Buyer Name: **Steven Motz**
Telephone Number: **(517) 241-3215**
E-Mail Address: **motzs@michigan.gov**

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Article 1 – Statement of Work (SOW)

1.0 PROJECT IDENTIFICATION

1.001 PROJECT REQUEST

This contract is the result of a Request for Proposals (RFP) issued by the State of Michigan (State), through the Michigan Department of Management & Budget (MDMB), with assistance of the Michigan Department of Information Technology (MDIT)

Contractor will provide support services for the existing Program/Project Management System (P/PMS) of the Michigan Department of Transportation (MDOT)

Services will include:

- System Support & Maintenance
- System Enhancement

Services will begin **April 1, 2007**.

The term of this contract is for **three (3) years**, with **two (1) one-year** optional extensions possible.

1.002 BACKGROUND

The mission of the Michigan Department of Transportation (MDOT) Bureau of Highway Development (Bureau) is to provide knowledge-based, service-oriented, and high quality transportation project development services. The Program/Project Management System (P/PMS) resides within the Engineering Support Services Unit, which is a sub-unit of the Design Division of the Bureau. This unit is dedicated to providing special expertise in support of specific software packages used in highway design, resulting in quality products and services for our customers, thus exceeding customer expectations for delivery of contracts on time and within budget.

Please refer also to the following URL for additional information related to the MDOT Design Services: http://www.michigan.gov/mdot/0,1607,7-151-9623_26662_10757---,00.html

The Michigan Department of Transportation (MDOT) implemented P/PMS, a complex system for managing the scheduling and resource requirements for the pre-construction (design) phase of highway projects. P/PMS was fully functional in October 1994, and can track the pre-construction phase of jobs from the conceptual stage through design and to the award of the construction contract. The cost to design, develop and implement P/PMS was approximately \$3 Million (not adjusted for inflation) from 1990 to 1994. The system uses 116,000 lines of code that access 800 tables containing 600 unique data fields.

The P/PMS standardizes planning, scheduling, reporting, and tracking work using network templates and the network generator. The system provides:

- Summary-level information on all projects and programs
- Accurate program, job and task resource scheduling and reporting.
- Proactive monitoring and control capabilities to accurately track project status and costs
- Standardized job network templates, capable of customized editing, to enable faster, easier creation of project schedules based on Critical Path Methods activity analysis
- Fast, easy updating, with the ability to retrieve or generate reports based on a wide variety of select and sort options
- Open communications for identifying and resolving problems as early in the process as possible

The P/PMS has sufficient capacity to handle data volumes for at least 2,000 active projects, along with the power to perform a multi-project schedule analysis for all projects simultaneously, using either resource or time constraints. At least 20 standard network types (model templates) have been developed, each including approximately 150 tasks and 50 summary or milestone activities. The following chart outlines the number and roles of P/PMS users.



User Classification	Approx. # of Users	User Definition & System Access
Statewide Program Manager	15	The manager of a Department Program Area. The Program Manager will have read and write access to all information in the Job/Project Area and the Program Area.
Project Manager (PM)	100	A Project Manager will have read and write access to his or her jobs in the Job/Project area and read only access to the Program Area.
Cost & Scheduling Engineer	30	This user has same rights as project manager and has read/write access to all jobs in a particular TSC or Region.
Project Scheduling Specialist	125	PM designee on a per project basis and has same permissions as the PM.
Program Scheduling Specialist	5	Program management designee that has same permissions as the Project Manager
Region System Manager	7	This user is similar to the program manager except this user has read/write access to all jobs in a particular region.
Real Estate	15	This user has the ability to change durations for real estate tasks and read only for all other areas.
Read Only	50	The Read-Only User will have read-access to all areas.
Application Administrator	4	This access type is given to the P/PMS team members. This assignment will give permission to a user to control, from within the P/PMS Administration Area, application IDs, accesses, and user classification categories. The Application Administrator has full operation access to all areas and will assist or perform operations where required.
Resource Responsible Unit	150 - 160	In charge of a specific task on the project which is assigned from the PM
Web Report User	800	This user has the ability to view reports on the Web-based version.

In order for MDOT to realize the many benefits of this tool, project management, and the business processes designed therein, P/PMS must be accepted and utilized by all the participants of a project. This level of use and acceptance can only be accomplished by timely training, support, and system enhancements of P/PMS. This specialized assistance is provided by both in-house and consultant staff. MDOT initially intended to perform these duties in-house. The current MDOT staff of two full-time positions does not allow for adequate support of the system.

P/PMS supports the mission of the Department and the Bureau by providing a project management system that enables expedient planning and execution of highway design plans, taking into account schedule, resources, and cost. P/PMS is an integral tool and part of the planning and design process at MDOT.

P/PMS supports the mission of the Department and the Bureau by:

- Allowing creation of more realistic schedules earlier in the project life cycle.
- Providing for more accurate planning, predictability, and forecasting of schedules, resources, and costs.
- Enabling higher on-time project completion rates, resulting in fewer project extensions.
- Increasing project productivity through application of project management tools.
- Increasing project monitoring ability through status updates.



- Increasing communication between the various resources working on projects.
- Increase our credibility to the public and legislature through timely and predictable lettings.

The objectives of this contract are as follows:

- **Provide System Support & Maintenance for P/PMS in cooperation with MDOT/MDIT staff.** (See **Section 1.104B.**, Services to be Provided, and [Article 1, Attachment J](#) – Tasks and Deliverables)
- **Provide continuous System Enhancements to P/PMS.** Primarily, this will be modifications made to the system to reflect changes in MDOT’s organization and processes. (See **Section 1.104B.**, Services to be Provided, and [Article 1, Attachment J](#) – Tasks and Deliverables)

All of the above objectives are in support of the existing system and processes. They serve to ensure proper and efficient use of the available tools, as well as provide for the ability to react to user needs. Adequate support and enhancements are critical to managing the delivery of the highway construction program.

Additional information on the P/PMS is available on the MDOT Bulletin Board:

<http://mdotwas1.mdot.state.mi.us/public/bbs/index.cfm?action=openlib>

Task Manual = Task_Manual.pdf

User Manual = User_Manual_10_04.pdf

Job Characteristics Manual = JobChar_2.pdf

The State has methods, policies, standards and guidelines that have been developed over the years. Contractors are expected to follow these requirements. Specifically, the State’s Project Management Methodology (PMM) must be followed. The PMM may be reviewed at www.michigan.gov/projectmanagement.

The following glossary of terms is provided:

Term	Definition
CATS	Contract Administration Tracking System
EDMS	Electronic Document Management System
ESS	Environmental Status System
FHWA	Federal Highway Administration
FileNet	Document Repository
MAIN	Michigan Administrative Information Network
MAP	Michigan Architectural Project
MFOS	Map Financial Obligation System
MicroStation	Bentley application used for infrastructure design, construction and operation
MPINS	MAP Project Information System
P/PMS	Program Project Management System
PAB	Project Acquisition and Billing System
PDR	Property Disposition Record
ProjectWise	Bentley collaboration server and repository for design files
Trns*port	The State of Michigan transportation database
TSC	Transportation Service Center

1.1 SCOPE OF WORK AND DELIVERABLES

1.101 IN SCOPE

The contractor will provide the following services for the complete and successful support of P/PMS by providing the functionality required for the State’s business operations for the Michigan Department of Transportation. The following services are within the scope of this contract:

System Support & Maintenance

- Project Management
- User Support
- User Training
- Ad-Hoc Reporting
- Ad-Hoc Analysis
- General Maintenance
- Documentation

System Enhancements

- Modifications
- Interfacing
- Data Migration

These services are described in greater detail in the following sections:

- **1.104B** - Services to be Provided
- [Article 1, Attachment J](#) - Tasks and Deliverables

1.102 OUT OF SCOPE

- Cost of yearly software license renewal and maintenance agreement for CAT II software.
- Cold Fusion Web Report application maintenance and development.

1.103 ENVIRONMENT

P/PMS is a customized application developed in a proprietary, commercial-off-the-shelf software, the Control and Analysis Tool (CAT II) of Robbins-Gioia, Inc. This software resides on MDOT standard SUN Servers. All processing for the P/PMS and the CAT software in which it is written is performed on the SUN server. The system makes connections to various Oracle databases using an add-in for CAT called CAT/Lynx for Oracle. At various times during the day and evening, P/PMS uses CAT/Lynx to push and/or pull data from various department Oracle data systems. Most of the data exchange occurs during nightly processing.

The P/PMS uses Motif X-windows to display system information to users. Users connect to the P/PMS via an X-windows browser plug-in called Go-Global. This plug-in allows users in windows environments to access the P/PMS without any prior knowledge of X-windows. By using this approach, any users with access to the MDOT intranet can login and use the system.

CAT uses its own Open Database Connectivity (ODBC) drivers to extract data for use in various systems. An example of a current use is the web reporting system. The web reporting system uses data from the CAT database and Cold Fusion to display information to viewers on the MDOT intranet.

P/PMS uses a variety of methods for interacting with various MDOT users and data systems. Interfaces are diagrammed on the following page. Database interfaces include:

MAP/MPINS – central database and interface for collecting and tracking project information from concept through design. P/PMS is integrated with this Oracle database. An understanding of the structure and fields in the Oracle database is critical to efficient coding of P/PMS.



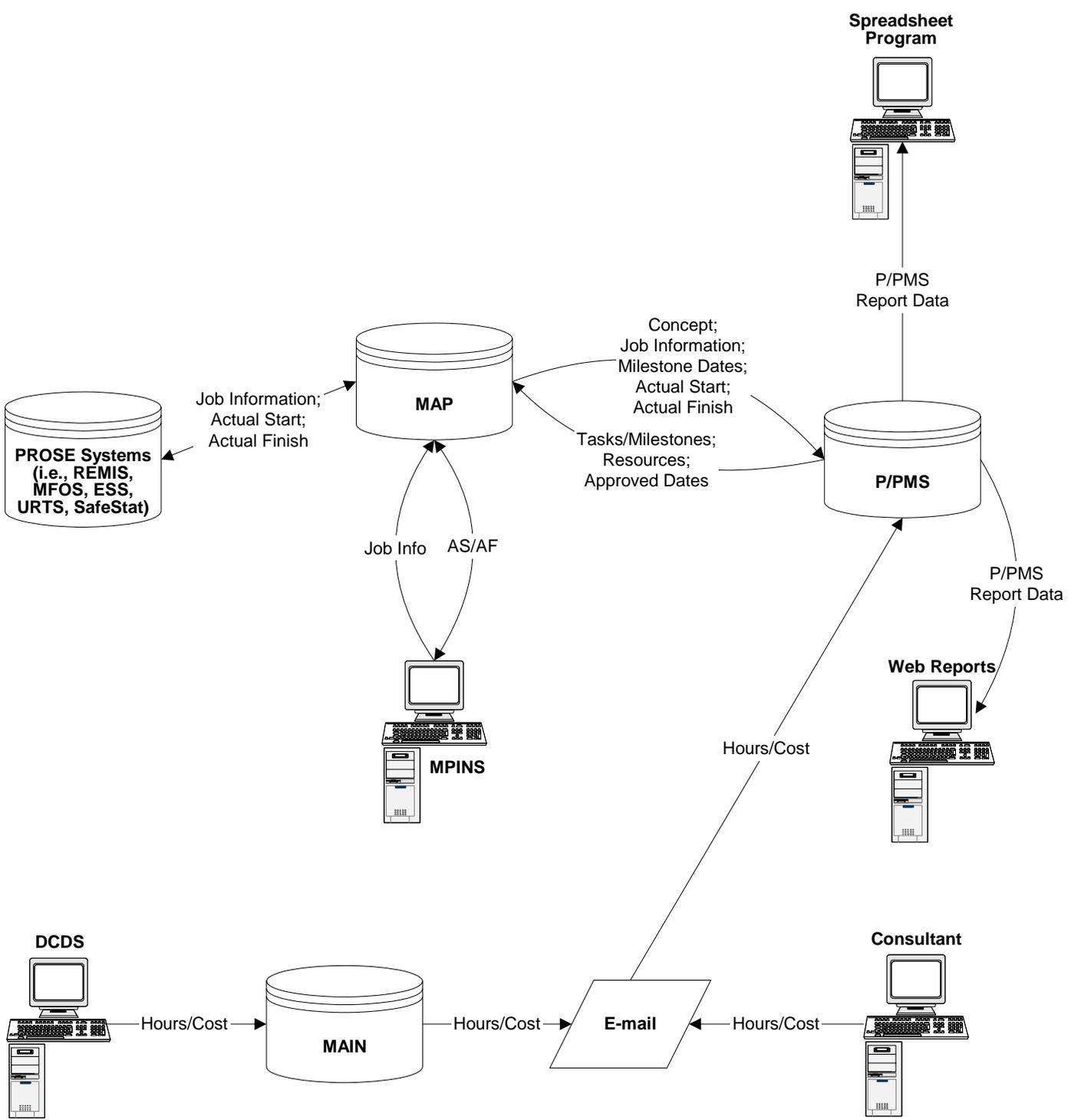
ProjectWise – central repository for project documents. P/PMS tasks are frequently deliverable-based. When new processes are developed in ProjectWise they will be evaluated to see if dates of state or workflow changes can be used in P/PMS. When documents are set to final in ProjectWise it is desirable to populate that finish date into P/PMS.

Web Reports – P/PMS has a scheduled upload to an Oracle database. A Cold Fusion application uses this data to generate web reports that mirror the P/PMS reports. The upload to Oracle would be maintained by this contract.

P/PMS operates within the State's standard technical environment in terms of hardware, operating systems, desktop workstations, network, firewall, locations, and browser. Please see http://www.michigan.gov/mdot/0,1607,7-151-9625_21540---,00.html – MDOT/MDIT Standard Information Technology Environment for more details.

Information regarding the State's information technology architecture and standards for hardware, database applications, network hardware and monitoring tools, identity management/authentication and development tools may also be found at: <http://www.michigan.gov/dit/0,1607,7-139-34305---,00.html>.

P/PMS Configuration



1.104 WORK AND DELIVERABLE

Contractor shall provide deliverables, services and staff, and otherwise do all things necessary or incidental to provide the functionality required for the State’s business operations, in accordance with the requirements as set forth below.

A1. Current System Requirements

P/PMS currently meets the following requirements described in Article 1, Attachment’s H, I, and J. The Contractor will ensure that the current requirements will continue to be met following future maintenance and enhancements.

1) Technical Requirements (Article 1, Attachment G) – Contractor shall provide the services and deliverables to ensure the system continues to meet the requirements stated in [Article 1, Attachment G](#). Contractor will ensure that the requirements in **Article 1, Attachment G** will continue to be met during enhancements and maintenance to the system.

2) General System Requirements (Article 1, Attachment H) – Contractor shall provide the services and deliverables to ensure the system continues to meet the requirements stated in [Article 1, Attachment H](#). Contractor will ensure that the requirements in **Article 1, Attachment H** will continue to be met during enhancements and maintenance to the system.

3) Functional Requirements (Article 1, Attachment I) – Contractor shall provide the services and deliverables to ensure the system continues to meet the requirements stated in [Article 1, Attachment I](#).

A2. Service Level Requirements

1) Service Levels (Quality Requirements) –Contractor shall adhere to the Service level requirements stated in [Article 1, Attachment F](#). Contractor will adhere to the Service Level Requirements stated in **Article 1, Attachment F**.

B. Services to be Provided

The services being provided must use the State’s Project Management Methodology and must be identified as phases or milestones with associated tasks/activities and deliverables. For System Enhancement services, an abbreviated system development life cycle will be used.

The contract consists of two parts, System Support & Maintenance and System Enhancement.

1) System Support & Maintenance

These tasks will be performed by the integrated team of contractors and MDOT/MDIT staff. Sufficient cross training shall be performed so that MDOT/MDIT staff and contractors are equally capable of performing each task.

Task	Description of Tasks	Contractor Role/ (Deliverable)	State Role
<i>Project Management</i>	<i>Using Project Management Methodology direct and manage the P/PMS team to meet objectives. This may include limited travel to MDOT Region and TSC offices.</i>	<i>Run bi-weekly status meetings. Distribute work to team members. Represent P/PMS in various MDOT meetings. Prioritize tasks with business area input.</i>	<i>Set team objectives. Participate on P/PMS team. Assist with determination of priorities.</i>



Task	Description of Tasks	Contractor Role/ (Deliverable)	State Role
<i>User Support</i>	<p><i>Assist Statewide users with operation of P/PMS.</i></p> <p><i>Provide Help Desk troubleshooting.</i></p> <p><i>Communicate Project Management methodologies.</i></p> <p><i>Assist with Newsletters, User notifications and general marketing of the system.</i></p> <p><i>Assist users with report creation and understanding.</i></p> <p><i>This may include limited travel to MDOT Region and TSC offices.</i></p>	<p><i>Provide timely and expert support to users.</i></p> <p><i>Keep a detailed log of support provided using MDOT's Log/ITT ticket reporting system.</i></p> <p><i>Provide written material for newsletters, user notifications and marketing material.</i></p> <p><i>Enter data and modify networks when needed.</i></p>	<p><i>MDOT support staff will also be performing the same activities.</i></p>
<i>User Training</i>	<p><i>Provide assistance with statewide training in software usage and Project Management concepts.</i></p> <p><i>Provide informal training when requested by users.</i></p>	<p><i>Provide up to date training course and materials that incorporate all current system enhancements.</i></p> <p><i>Keep a detailed log of those that attended training classes.</i></p> <p><i>Measure performance with class evaluations.</i></p>	<p><i>Schedule training classes and identify participants.</i></p> <p><i>Assist with training tasks.</i></p> <p><i>MDOT support staff will also be performing the same activities.</i></p>
<i>Ad-Hoc Reporting</i>	<p><i>MDOT management and leadership often request Ad-Hoc reports. This requires database queries to generate the information in a timely manner.</i></p>	<p><i>Perform queries of the P/PMS database to extract desired information.</i></p> <p><i>Create requested reports in an understandable format.</i></p> <p><i>Deliver reports within requested time frame.</i></p> <p><i>Reports need to be 100% accurate.</i></p>	<p><i>Specify the information needed and intent of the reports.</i></p> <p><i>Set the expected completion date.</i></p> <p><i>MDOT support staff will also be performing the same activities.</i></p> <p><i>Review and approve report content and format.</i></p>
<i>Ad-Hoc Analysis</i>	<p><i>MDOT management and leadership often request Ad-Hoc analysis of existing data and what if scenarios. This may require generation of reports, database queries and data input.</i></p> <p><i>Generation of information for template refinement and standards validation.</i></p>	<p><i>Gather data needed using the most efficient method.</i></p> <p><i>Compile data for analysis.</i></p> <p><i>Analyze data to develop the information requested.</i></p> <p><i>Provide results in an understandable format.</i></p> <p><i>Analyze actual data including labor charges,</i></p>	<p><i>Specify the information needed and intent of the analysis.</i></p> <p><i>Set the expected completion date.</i></p> <p><i>MDOT support staff will also be performing the same activities.</i></p> <p><i>Review and approve the resulting analysis.</i></p>



Task	Description of Tasks	Contractor Role/ (Deliverable)	State Role
		<i>durations, hands on time, work types and job locations to make recommendations for refining templates and standards to better predict future projects.</i>	
<i>General Maintenance</i>	<i>Perform general maintenance of the system. In the event of system failure, troubleshoot the problems to get the system back online.</i>	<i>Assist MDIT with server configuration and fine tuning of the system.</i> <i>Assist MDIT with system printer connections and setup.</i> <i>Assist MDIT with setup of new user accounts.</i> <i>Implement new CAT II software versions.</i> <i>Provide break/fix and troubleshooting to maintain system availability.</i> <i>Monitor system processes for irregularities during scheduled activities.</i> <i>Troubleshoot data inconsistencies.</i>	<i>Identify any system performance issues and data discrepancies.</i> <i>Assist with business area communication to identify issues.</i> <i>MDOT support staff will also be performing the same activities.</i>
<i>Documentation</i>	<i>Keep current documentation up to date with changes to the system. This includes the User Manual, Task Manual, Job Characteristics Manual and System Manuals.</i>	<i>Provide timely updates to existing manuals that incorporate any changes to the system.</i> <i>Submit revised information to MDOT in electronic format for approval and publishing.</i>	<i>Assist with identification of the changes needed.</i> <i>Approve and publish the updated material.</i> <i>MDOT support staff will also be performing the same activities.</i>

2) System Enhancement

Work plans will be developed through cooperative effort between the contractor and MDOT staff to define the services needed. The work plan will include:

- i. A description of the deliverables to be provided.
- ii. Target dates and critical paths for the deliverables.
- iii. Identification of roles and responsibilities, including the organization responsible.
- iv. Process to finalize requirements.
- v. Internal milestones.
- vi. A time-phased plan, showing each event, task, and decision point in the work plan.
- vii. Task durations.

All work performed shall follow the applicable portions of the MDIT Software Development Lifecycle process and configuration management procedures. Authorization by MDOT/MDIT is required to move from the development environment to production.

Task	Description of Tasks	Contractor Role/ (Deliverable)	State Role
<i>Modifications</i>	<i>Make changes to the system to meet current business needs.</i>	<p><i>Analyze statements of work and communicate with MDOT to determine business needs and clarify any issues.</i></p> <p><i>Prepare detailed work plan.</i></p> <p><i>Modify code to meet business needs.</i></p> <p><i>Modify database to meet business needs</i></p> <p><i>Follow the applicable MDIT Software Development Lifecycle process and configuration management procedures.</i></p>	<p><i>Provide statement of work.</i></p> <p><i>Clarify business needs.</i></p> <p><i>Authorize work.</i></p> <p><i>Approve final deliverables and authorize development to production.</i></p>
<i>Interfacing</i>	<i>Develop interfaces to databases as common information is made available. Also includes changes necessary to continue or create uploads of information from other sources (payroll, engineering consultant reporting, etc.)</i>	<p><i>Analyze statements of work and communicate with MDOT to determine business needs and clarify any issues.</i></p> <p><i>Prepare detailed work plan.</i></p> <p><i>Modify code to allow interfaces to other databases.</i></p> <p><i>Modify database as needed to incorporate information.</i></p> <p><i>Follow the applicable MDIT Software Development Lifecycle process and configuration management procedures.</i></p>	<p><i>Provide statement of work.</i></p> <p><i>Clarify business needs.</i></p> <p><i>Identify business owners and IT staff that administer other systems.</i></p> <p><i>Authorize work.</i></p> <p><i>Approve final deliverables and authorize development to production.</i></p>
<i>Data Migration</i>	<i>In the event that a decision is made to create the next generation of P/PMS assist in data migration and conversion to the new system.</i>	<p><i>Analyze statements of work and communicate with MDOT to determine business needs and clarify any issues.</i></p> <p><i>Prepare detailed work plan.</i></p> <p><i>Provide assistance with defining the current database, tables and fields.</i></p>	<p><i>Provide statement of work.</i></p> <p><i>Clarify business needs.</i></p> <p><i>Authorize work.</i></p> <p><i>Act as liaison between teams for the new and old system.</i></p>



Task	Description of Tasks	Contractor Role/ (Deliverable)	State Role
		<p><i>Assist with mapping data from the old system to the new system.</i></p> <p><i>Create methods to port historical data, standards, templates, breakdown structures, etc. to the new system.</i></p> <p><i>Assist with the conversion to the new system.</i></p>	<p><i>Assist with mapping data from the old system to the new system.</i></p>

1.2 ROLES AND RESPONSIBILITIES

1.201 CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES

Location of Work - The work is to be performed, completed, and managed at the following location:

- The contractor’s offices will be located at 425 West Ottawa Street, in Lansing, Michigan, on the second floor of the Murray D. Van Wagoner Transportation Building, in the Design Division.

The State **will** provide the following resources for the contractor’s use on this project:

- Work space
- Minimal clerical support
- Desk
- Telephone
- PC workstation
- Printer
- Access to copiers and fax machine

Contractor’s staff must be able to pass a security clearance check conducted by the Contractor. Contractors must present certifications evidencing satisfactory background checks and drug tests for all staff identified for assignment to this project. Contractor is responsible for any costs associated with ensuring their staff meets all requirements.

The Contractor’s Organizational Chart is included in [Article 1, Attachment B](#), and contractor shall update when changed, indicating lines of authority for personnel involved in performance of this Contract and relationships of this staff to other programs or functions of the firm. This chart must also show lines of authority to the next senior level of management and indicate who within the firm will have prime responsibility and final authority for the work.

The Contractor will continue to work with the P/PMS Project Manager by communicating project status, informing of industry best practices and ensuring that the P/PMS team operations are running at an optimum level. There is much overlap between the responsibilities of the MDOT Analysts and the Contractor Team. The Contractor will continue to work very closely with the MDOT Analysts on items such as training, documentation, ad-hoc analysis, ad-hoc reporting, project management best practices, meeting schedules and Control and Analysis Tool (CAT II) programming assistance. The Contractor will ensure that during this contract these persons learn the day-to-day operations of the P/PMS, and the Contractor will work with these persons on documentation, system usage, introductions to databases and database creation.

Contract Administrator

The Contractor shall identify a Contract Administrator. The duties of the Contract Administrator shall include, but not be limited to:

- i) supporting the management of the Contract,
- ii) facilitating dispute resolution, and
- iii) advising the State of performance under the terms and conditions of the Contract.

The State reserves the right to require a change in the current Contract Administrator if the assigned Contract Administrator is not, in the opinion of the State, adequately serving the needs of the State. The Contractor’s Contract Administrator will be subject to the State’s interview and approval. The Contract Administrator will not be considered Key Personnel.

Project Manager

The Contractor will provide a project manager to work closely with the designated personnel from the State to insure a smooth transition of services. The project manager will coordinate all of the activities of the Contractor personnel assigned to the project and create all reports required by State. The Contractor’s Project Manger shall be identified as a Key Personnel subject to the State’s interview and approval.

The Contractor's project manager responsibilities include, at a minimum:

- Manage all defined Contractor responsibilities in this Scope of Services.
- Manage Contractor’s subcontractors, if any
- Develop the project plan and schedule, and update as needed
- Serve as the point person for all project issues
- Coordinate and oversee the day-to-day project activities of the project team
- Assess and report project feedback and status
- Escalate project issues, project risks, and other concerns
- Review all project deliverables and provide feedback
- Proactively propose/suggest options and alternatives for consideration
- Utilize change control procedures
- Prepare project documents and materials
- Manage and report on the project’s budget
- Adhere to all State of Michigan Standards as indicated in this document.

The Contractor will provide sufficient qualified staffing to satisfy the deliverables of this Contract. As such, they will be considered essential to the work. Prior to directing any of the key personnel to other programs or assigning duties not directly related to this project, the Contractor shall provide advanced written notification of a least thirty (30) calendar days to the State Contract Administrator and shall submit justification in sufficient detail to permit evaluation of the impact of the proposed changes on the project and its schedule. No deviation shall be made by the Contractor without the written consent of the Contract Administrator.

Key personnel shall be committed for the full duration of the contract. They should have extensive and demonstrated experience in the areas indicated by the job titles and the position requirements that follow. Individuals proposed for the work must be the actual individuals that will perform the work.

The following paragraphs set forth the roles, experience levels and qualifications that shall be provided to perform the tasks outlined in this contract. The contractor staff must possess the skills, knowledge, and experience required to perform the duties effectively and efficiently at the level specified in the Work Statement.

Project Manager –Key Personnel

- 5 years experience in project management of IT systems development for government agencies
- 5 years experience in the development of scheduling systems for government agencies
- In depth knowledge of transportation highway engineering design processes and activities
- In depth knowledge and experience with a Project Management scheduling tool
- Minimum of 3 years performing custom programming of software to meet business needs
- Knowledge of the Unix operating system
- Experience with Oracle databases
- Ability to act as back up for the Senior IT Programmer
- Experience in the development of training materials
- PMP Certification desirable
- Excellent written and oral communication skills
- ***The Project Manager must have CAT II software programming experience.***

Senior IT Programmer/Analyst –Key Personnel

- 3 years experience in the development of scheduling systems for government agencies
- 3 years experience in supporting Project management scheduling tools
- In depth knowledge of Transportation highway engineering design processes and activities
- In depth knowledge of Oracle and other databases
- Minimum of 3 years performing custom programming of software to meet business needs
- Knowledge of the Unix operating system
- Experience in the development of training materials
- Excellent written and oral communication skills
- ***The Senior IT Programmer/Analyst must have CAT II software programming experience.***

Business Analyst –Key Personnel

- Experience in the development of scheduling systems for government agencies
- Experience using project management scheduling tools
- Knowledge of Transportation highway engineering design processes and activities
- Experience in performing training classes
- Experience in the development of training materials

Other contractor responsibilities shall include:

- 1.) Postage not related to the project.
- 2.) Coverage of long distance telephone charges not directly related to the project.
- 3.) All personnel provided by the contractor shall be subject to the rules, regulations, and policies of MDOT and the Michigan Department of Civil Service.

1.202 STATE STAFF, ROLES, AND RESPONSIBILITIES

The MDOT/MDIT Project Team consists of the following three groups that collaborate to support the system:

1. **Project Sponsors**
2. **P/PMS Project Support Team**
3. **Cost & Scheduling Engineers (CSE) Working Group**

1. **Project Sponsors** include:

- MDIT Client Services Director
- Director of Bureau of Highway Development
- Engineer of Design



Role of Project Sponsors:

Project Sponsors will provide the vision for the business design and how the system shall provide for that vision. They shall be available on an as needed basis. Sponsors will be empowered to:

- Resolve project issues in a timely manner
- Review project plan, status, and issues
- Resolve deviations from project plan
- Provide high level acceptance sign-off
- Ensure timely availability of State resources
- Make key implementation decisions, as identified by the Contractor's project manager, within 48-hours of their expected decision date.

2. P/PMS Project Support Team

This team consists of both Department and consultant personnel. Currently three Department personnel and three consultant personnel make up this team:

- MDOT P/PMS Project Manager
- MDOT P/PMS Lead Analyst
- MDOT P/PMS Analyst
- Consultant Project Manager
- Consultant Senior Programmer/Analyst
- Consultant Business Analyst

Role of Project Manager:

The State's Project Manager will provide the following services:

- Provide State facilities, as needed
- Coordinate the State resources necessary for the project
- Facilitate coordination between various external contractors
- Facilitate communication between different State departments/divisions
- Milestone acceptance sign-off
- Resolution of project issues
- Escalation of outstanding/high priority issues to Sponsor
- Utilize change control procedures
- Conducting regular and ongoing review of the project to confirm that it meets original objectives and requirements
- Documentation and archiving of all important project decisions
- Arrange, schedule and facilitate State staff attendance at all project meetings
- Formally accept deliverables
- Authorize work
- Authorize software promotion from development to production
- Approve work plans

3. Cost and Scheduling Engineers (CSE) Working Group

Role of CSE Working Group:

This team has been developed to:

- Improve communication between the P/PMS Support Team and the Regions and TSCs
- Address project management issues
- Provide further feedback on possible changes to the system
- Further inform users of P/PMS capabilities and functions
- Define business needs.
- Represent respective areas when formulating decisions.
- Assist CSEs in performance of their duties

The prioritization of P/PMS tasks will be recommended by the CSE, user community, Management, and/or the P/PMS Support Team and finalized by the MDOT Project Manager.

Issue Escalation and Contract Administration



Issues shall be escalated for resolution from level 1 through level 4, as defined below:

- Level 1 – Business leads (P/PMS Project Support Team)
- Level 2 – Cost and Scheduling Engineers Working Group
- Level 3 _ P/PMS MDOT Project Manager
- Level 4 _ Project Sponsors

In addition, the following State personnel/resources may be required at stages of the project. The Contractor’s Project Manager will make every effort to provide the State with advance notice of when those services may be required.

- Systems Analyst
- Application Administrator
- User Implementation Coordinator
- Network Administrator
- Database administrator
- Remote access to test database environment

The Michigan Dept. of Information Technology is responsible for the administration of the services within the contract. MDIT shall provide a program manager as a contact for all issues pertaining to the execution of services under the contract. As of the effective date for contract commencement the **MDIT Program Manager** shall be:

W. Steve Wensko
 Michigan Dept. of Information Technology
 Lansing, MI 48913
 Phone: 517-335-2401
 E-mail:Wenskos @michigan.gov

MDIT shall provide a Contract Administrator identified in Article 2, Section 2.015, whose duties shall include but not be limited to supporting the management of the Contract.

1.203 RESERVED - OTHER ROLES AND RESPONSIBILITIES

1.3 PROJECT PLAN

1.301 PROJECT PLAN MANAGEMENT

A. Orientation Meeting

1. Upon ten (10) calendar days from execution of the Contract, the Contractor’s P/PMS team as identified in Article 1, Attachment B will be required to attend an orientation meeting to discuss the content and procedures of the Contract. Also attending will be the Project Sponsors identified in 1.202.1 and the MDOT personnel identified on the P/PMS Project Support Team in 1.202.2.
2. The meeting will be held in Lansing, Michigan, at a date and time mutually acceptable to the State and the Contractor. The Contractor’s Account Manager and Contract Administrator may attend via teleconference.
3. The State shall bear no cost for the time and travel of the Contractor for attendance at the meeting.

B. Performance Review Meetings

1. The State will require the Contractor to attend monthly meetings, at a minimum, to review the Contractor’s performance under the Contract.
2. The Performance Review Meetings will be held by the MDOT P/PMS Project Manager and MDOT P/PMS Lead Analyst, with attendance by the Contractor’s Account Manager and Contract Administrator at least twice yearly.
3. The meetings will be held in Lansing, Michigan, or by teleconference, as mutually agreed by the State and the Contractor.
4. The State shall bear no cost for the time and travel of the Contractor for attendance at the meeting.



C. Project Control

1. The Contractor will carry out this project under the direction and control of the MDOT Project Manager. The MDOT/MDIT Project Manager will review progress reports, and will review and approve payments.
2. Although there will be continuous liaison with the Contractor team, the Administrator or MDOT Project Manager shall have contact, at a minimum of twice monthly, with the Contractor's project manager for the purpose of reviewing progress and providing necessary guidance to the Contractor in solving problems which arise. The objective of this step is to ensure that the MDOT Project Manager is promptly informed of the project's progress and the major issues that confront the Contractor throughout the project.
3. Within five (5) working days of the award of the Contract, the Contractor will submit to the State project manager(s) for approval a **Final Work Plan**.
 - a. This work plan must be in agreement with section 1.104 Work and Deliverables, and must include the following:
 - i. The Contractor's project organizational structure.
 - ii. The Contractor 's staffing table with names and title of personnel assigned to the project, hourly rate, and percentage of time in each category outlined above. This must be in agreement with staffing of accepted proposal. Necessary substitutions due to change of employment status and other unforeseen circumstances may only be made with prior approval of the State.
 - iii. Certifications showing that proposed staff have satisfactory background checks and drug testing.
 - iv. Identify and provide contact information for the Contractor's Project Manager and Contract Administrator.
4. The Contractor will manage the project in accordance with the PMBOK® (Project Management Body of Knowledge from the Project Management Institute) and the state's Project Management Methodology (PMM). Methodology is available at http://www.michigan.gov/dit/0,1607,7-139-30637_31101---,00.html
 - a. Contractor will use an automated tool for planning, monitoring, and tracking the Contract's progress and the level of effort of any Contractor personnel spent performing Services under the Contract.
 - b. Contractor shall use automated project management tools, as reasonably necessary, in order to perform the cited Software Enhancement Services, which shall include, through the end of the Contract, the capability to produce:
 - i. Staffing tables with names of personnel assigned to Contract tasks.
 - ii. Project plans showing tasks, subtasks, deliverables, and the resources required to perform each of the projects issued through statements of work.
 - iii. Updates must include actual time spent on each task and a revised estimate to complete.
 - iv. Graphs showing critical events, dependencies and decision points during the course of the Contract.
 - c. 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 standard is described with reasonable detail in the Statement of Work.

1.302 **REPORTS**

Reporting formats must be submitted to the State's Project Manager for approval within 20 business days after the effective date of the contract resulting from this RFP. Once both parties have agreed to the format of the report, it shall become the standard to follow for the duration of the contract. Contractor shall provide the following reports:

1. The Contractor must submit written monthly summaries of progress which outline the work accomplished during the reporting period; work to be accomplished during the subsequent reporting period; problems, real or anticipated, which should be brought to the attention of the MDOT Project Manager, and notification of any significant deviation from the previously agreed-upon work plans. All



areas of decision making that pertain to this project must be reviewed in detail with the MDOT Project Manager prior to any final decision. All meetings affecting this project shall be brought to the attention of the MDOT Project Manager.

2. The Contractor will maintain schedules for all tasks under this contract. This documentation will include Gantt charts and schedule reports. The Contractor is responsible for tracking hours expended on tasks in this document by item number as well as maintaining the task descriptions outlining these items. Parts or all of this information may be provided as part of other reports related to this project.
3. The Contractor will provide a detailed report in support of all invoices. This report shall outline the work performed during the invoice period. This report shall contain at least the information listed below for each contract task, with the format of the report proposed by the Contractor in the Contractor's response to the work statement and approved by the MDOT Project Manager.
 - Support Tasks (1.2, 1.4, 1.5 Defined in [Article 1, Attachment J](#)) must indicate person(s) who received support and description of support.
 - Training (1.3 Defined in [Article 1, Attachment J](#)) must indicate the location of the class, attendees, instructor(s), and total time required to prepare and teach the class.
 - Maintenance (1.6 Defined in [Article 1, Attachment J](#)) must indicate initiator of work, description of work, and time worked.
 - System Enhancements (2.1, 2.2, 2.3 Defined in [Article 1, Attachment J](#)) must include a description of work and time worked.

The report must include the following breakdown for all Contractor Key Personnel:

Total Hours billed for **System Support & Maintenance**

- Hours billed for User Support
- Hours billed for User Training
- Hours billed for Ad-Hoc Reporting
- Hours billed for Ad-Hoc Analysis
- Hours billed for General Maintenance
- Hours billed for Documentation

Total Hours billed for **System Enhancements**

- Hours billed for Modifications
- Hours billed for Interfacing
- Hours billed for Data Migration

1.4 PROJECT MANAGEMENT

1.401 ISSUE MANAGEMENT

An issue is an identified event that if not addressed may affect schedule, scope, quality, or budget.

The Contractor shall maintain an issue log for issues relating to the provision of services under this Contract. The issue management log must be communicated to the State's Project Manager on an agreed upon schedule, with email notifications and updates. The issue log must be updated and must contain the following minimum elements:

- Description of issue
- Issue identification date
- Responsibility for resolving issue.
- Priority for issue resolution (to be mutually agreed upon by the State and the Contractor)
- Resources assigned responsibility for resolution
- Resolution date
- Resolution description

1.402 RISK MANAGEMENT

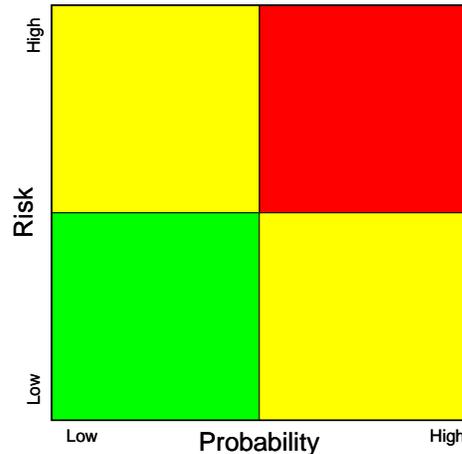
A risk is an unknown circumstance or event that, if it occurs, may have a positive or negative impact on the Contract. Risk management generally involves (1) identification of the risk, (2) assigning a level of priority based on the probability of occurrence and impact to the project, (3) definition of mitigation strategies, and (4) monitoring of risk and mitigation strategy.

RISK IDENTIFICATION

Risk identification is a continuous process and can occur at any time during a project. A Risk Identification Checklist will provide a set of baseline questions to assist in processing potential risks/issues. These questions examine program objectives, system capabilities and requirements, and environmental constraints to outline program/product risks in terms of six elements: schedule, quality, technical, stakeholders, staffing, and funding/cost. All P/PMS stakeholders and staff will be encouraged to identify potential problems for evaluation as risks.

RISK PRIORITIZATION

The purpose of analyzing risks is to (1) the extent of risks that the program faces (2) determine which risks are related to each (classify), and (3) determine the most risks (prioritize). During this activity, risks are to determine the probability of occurrence, the the impact (actual risk) if they occur, and a Risk Assessment Matrix. This analysis is prioritization to determine the most important risks that require development of mitigation Because many risks may be related (whether or impact), risks also are classified to facilitate plans for related risks. The key output of this ranking of the highest priority risks for the



determine (evaluate), other important analyzed extent of plotted on used in program plans. by cause mitigation activity is a program.

Risk Assessment Matrix: Designed to illustrate the potential impact of project risks, the Risk Assessment Matrix allows project managers to address the highest priority risks first.

effective issues. during most

RISK MITIGATION STRATEGY DEFINITION

Risk mitigation strives to determine the most method for handling risks should they become Using the highest priority list developed Risk Prioritization, this activity focuses on the important risks first. Possible mitigation strategies include:

- Avoid the risk: Take action to change the design or work plan to eliminate the risk.
- Transfer the risk: In some circumstances it may be possible to have another party assume responsibility.
- Mitigate the risk: Take actions to lessen the impact of the risk and/or the chance of the risk occurring.
- Accept the risk: The risk might be small enough that the costs of mitigation outweigh the benefits.

Risk mitigation also considers the appropriate assignment of responsibility for risk resolution within the organization. This may cause the escalation of some risks to other levels of the organization. A plan will be developed for those risks to be mitigated, and where appropriate, contingency plans may also be developed.



Key considerations in this activity include effective use of available resources as well as comparison of the cost of mitigation to the cost of the potential risk. To ensure mitigation plans are assessed effectively for success, the proposed mitigation actions must be measurable. The key outputs from this activity are mitigation plans, contingency plans and the appropriate risk and plan measures, after which a risk owner will be assigned to develop a mitigation plan. The following are some typical risk mitigation actions:

- Establish schedule and cost reserves to cover a reasonable level of risk event occurrences
- Document all planning assumptions and communicate them to all stakeholders
- Break the project into smaller, more manageable, phases and work packages
- Assign and train backups for the key skilled positions
- Practice effective change control
- Require signoffs of all key deliverables
- Establish key management checkpoints at which overall project status and risks will be reviewed and necessary management decisions will be made
- Ensure a high level of user involvement and communication with users
- Provide accurate and concise project status reports, identifying all management issues and symptoms of potential risks becoming realities
- Set up redundancies and backup procedures for development deliverables

Risk identification and analysis may identify 'positive' risks, opportunities for improved solutions requiring a change to current project plans, but which benefit stakeholders.

RISK MONITORING

Monitoring and reporting on each risk is an essential component in ensuring project success. Forgotten risks, even those assessed as low probability and impact can rapidly become issues and with potentially serious impacts on the P/PMS project. Successful risk monitoring requires data be acquired, compiled, and reported throughout the organization, including risk and mitigation status, and updated risk data. The characteristics of this activity include continual re-evaluation of risk exposure, analysis of trends, and accurate and timely data and reporting designed to serve the needs of the audience.

The Contractor will use the strategies outlined above to mitigate risks that occur on the project and report risks to the State at the twice-monthly P/PMS Progress Meetings.

1.403 CHANGE MANAGEMENT

Change management is defined as the process to communicate, assess, monitor, and control all changes to system resources and processes. The State also employs change management in its administration of the Contract.

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

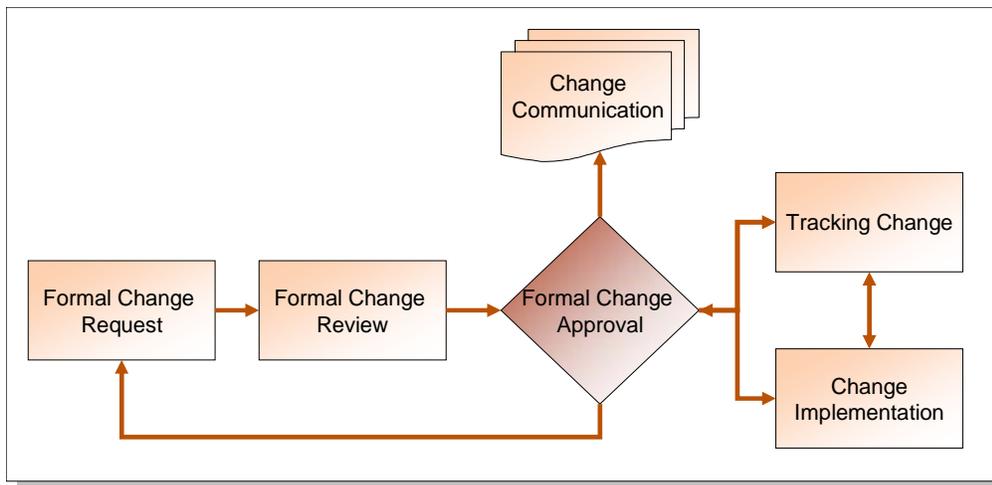
The Contractor must employ change management procedures to handle such things as "out-of-scope" requests or changing business needs of the State while the migration is underway.

The Contractor will employ the change control methodologies to justify changes in the processing environment, and to ensure those changes will not adversely affect performance or availability.

The Contractor will ensure that all changes:

- Are determined to be beneficial to the P/PMS project with no adverse effects on performance or availability
- Are rigorously examined, mutually agreed upon, documented and communicated effectively to all stakeholders
- Are coordinated effectively as a change to one area of a project often has an impact on other areas
- All changes are managed effectively when they occur

The Contractor will employ a rigorous Change Management policy that aims to ensure that P/PMS system performance and availability are not compromised while approved changes are in process. By following a six-step process (illustrated below) that ensures proper analysis, formal approval and tracking of any approved changes, the Contractor will work to ensure that each change is a beneficial one.



- **Formal Change Request** – Contains accurate estimates, based on as much objective data as possible, and illustrates impacts not only to the project timeline, but on P/PMS scope, schedule, risk, quality, and cost.
- **Formal Change Review**– Includes a thorough review of all proposed changes, ensuring proposed changes have adequate planning/fallback prior to submission, and determining any negative impacts requiring the development of an alternative approach or further evaluation
- **Formal Change Approval** – Assigns primary responsibility for implementing the change
- **Change Communication** – Promotes the effective communication of change across project areas and stakeholders to mitigate unforeseen, negative impacts that may require costly or risky workarounds.
- **Change Implementation** – Includes a schedule for implementing the change and a list of relevant stakeholders and their implementation roles.
- **Tracking Change** – Through the use of a Change Log.

1.5 ACCEPTANCE

1.501 CRITERIA

Acceptance is tied to meeting the defined requirements and performance service levels.

The following criteria will be used by the State to determine Acceptance of enhancement Deliverables provided under this SOW:

When an enhancement is tested and verified to ensure that it includes all features required and has been successfully moved to production, acceptance/sign off will occur. Testing and verification timeline will be agreed upon by the State and the Contractor for each enhancement.

1.502 FINAL ACCEPTANCE

Final acceptance is expressly conditioned upon completion and delivery of all deliverables, completion of all tasks in the project plan as approved, completion of all applicable inspection and/or testing procedures, and the certification by the State that the contractor has met the defined requirements.

1.6 COMPENSATION AND PAYMENT

1.601 COMPENSATION AND PAYMENT

Compensation for this contract will be provided based on the fully loaded hourly rate by type of resource outlined in [Article 1, Attachment A](#). The estimated contract value will be based on the contractor rates for the three key personnel positions outlined in Section 1.201 and [Article 1, Attachment B](#), using a maximum of 2,000 hours per resource per year that shall be used towards both System Support/Maintenance and System Enhancements.

System enhancements will be defined in a specific work plan developed between the Contractor and MDOT staff as defined in Section 1.104B.2.

For the entire term of the Contract, the Contractor must guarantee to provide the System Support/Maintenance and Enhancements at the proposed rates. Such rates cannot increase during any term of the Contract.

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 Hourly Rates. Offsite training that requires travel shall be considered an unusual expense and the State will reimburse the contract for such as defined Article 2.092 (c) out of pocket expenses. Such expenses are limited to \$1,500 per year.

Payment

Invoices shall be submitted monthly. Specific details of invoices and payments will be agreed upon between the Contract Compliance Inspector and the Contractor after the proposed Contract Agreement has been signed and accepted by both the Contractor and the State of Michigan.

1.7 ADDITIONAL TERMS AND CONDITIONS SPECIFIC TO THIS SOW

1.701 ADDITIONAL TERMS AND CONDITIONS SPECIFIC TO THIS SOW

- A. Conflict with General Terms and Conditions of Article 2.** In the event that any of the requirements and terms of this Statement of Work (SOW) conflict with general terms and conditions stated in Article 2 of the Contract, the requirements and terms of this specific SOW shall govern with respect to this SOW only.

**B. Other Vendors**

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

Article 1, Attachment A
Pricing

All contractor hourly rates identified in Table 2 shall be fully loaded by type of resources and will be fixed for the duration of the contract.

Offsite training requiring travel shall be considered an unusual expense and is not included in the fully loaded rates. Therefore the State will reimburse the contractor for such as defined in Article 2.092 (c) out of pocket expenses. Such expenses are limited to \$1,500 per year.

The contractor will be required to conduct offsite Support Unit and Project Management training classes. Historically this has required 9 overnights per year and 14 day trips per year.

Services to Be Provided:

The fully-loaded hourly rates quoted in Table 2 of Article 1, Attachment A will be used to determine the price paid for System Support & Maintenance and System Enhancements as described in **1.104B** and **Article 1, Attachment J**. All Services will be billed on a Time and Materials basis based on the actual hours.

Table 1: Summary Cost Table

Cost Categories	TOTAL Cost (\$) Years 1,2,3 (Base Years Only)	TOTAL Cost (\$) Years 1,2,3 and Optional Years (4,5)
System Support & Maintenance And System Enhancements Give hourly rates in Table 2	\$1,742,040	\$2,998,160
Reimbursed Travel Expenses Not to exceed amount given in Table 3	\$ 4,500	\$ 7,500
Total Project Cost	\$1,746,540	\$3,005,660

Table 2: Contractor Staffing Hourly Rates
System Support & Maintenance and System Enhancements

TABLE 2a: Contractor Hourly Rates for Years 1,2,3

KEY STAFF	Resource Description	A Not to Exceed	B Hourly Rates (\$)	C 1 Year Total (A*B)	D 3 Year Total (\$) (C*3)
X	Project Manager	2,000	\$125.25	\$250,500.00	\$751,500.00
X	Senior IT Programmer /Analyst	2,000	\$98.16	\$196,320.00	\$588,960.00
X	Business Analyst	2,000	\$66.93	\$133,860.00	\$401,580.00
GRAND TOTAL (BASE YEARS 1,2,3)					\$1,742,040.00

TABLE 2b: Contractor Hourly Rates for Optional Years 4,5

KEY STAFF	Resource Description	A Not to Exceed	B Hourly Rates (\$)	C 1 Year Total (A*B)	D 2 Year Total (\$) Option Years (C*2)
X	Project Manager	2,000	\$135.47	\$270,940.00	\$541,880.00
X	Senior IT Programmer /Analyst	2,000	\$106.17	\$212,340.00	\$424,680.00
X	Business Analyst	2,000	\$72.39	\$144,780.00	\$289,560.00
GRAND TOTAL (OPTION YEARS 4,5)					\$1,256,120.00

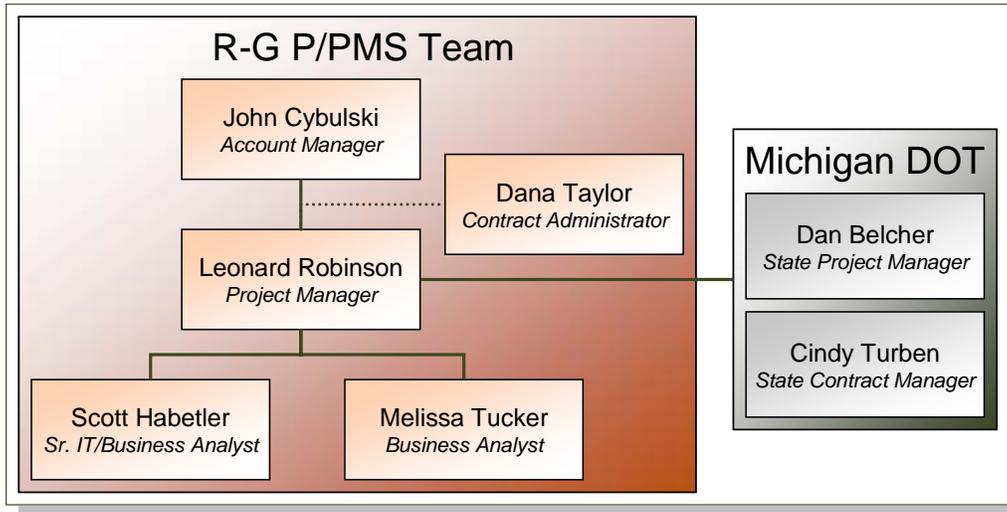
Table 3: Travel Reimbursement Expenses

YEAR	NOT TO EXCEED
1	\$ 1,500
2	\$ 1,500
3	\$ 1,500
TOTAL YEARS 1-3	<u>\$ 4,500</u>
4 (OPTION)	\$ 1,500
5 (OPTION)	\$ 1,500
TOTAL YEARS 1-5	<u>\$ 7,500</u>

Article 1, Attachment B
 Organizational Chart
 Key Personnel Requirements

CONTRACTOR ORGANIZATIONAL CHART

The figure below illustrates R-G's P/PMS team composition and reporting structure. While Ms. Taylor will serve as R-G's Contract Administrator and be the State's point of contact for all contractual matters, Mr. Robinson reports directly to Mr. John Cybulski, Account Manager, Social Services and State Governments. In this capacity, Mr. Cybulski provides executive support to the R-G Team and ensures that they have whatever tools and corporate resources necessary to ensure the success of the MDOT P/PMS project. Mr. Robinson will interface directly with the MDOT Project and Contract Managers during execution of the P/PMS project.



KEY PERSONNEL RESUME FORMS

Project Manger

KEY PERSONNEL RESUME FORM

Resource Name:	<i>Leonard E. Robinson, PMP</i>	
Role:	<i>Project Manger</i>	
Associated with: (check one):	Prime Bidder ✓	
Percentage of Time to be allocated to Project	<i>100%</i>	

Contractor's Project Manager must possess the following skills and experience that qualify the individual for the duties and responsibilities on this project for this role. The experience requirements detailed in the contract are restated as follows:

Project Manager Position Requirements
5 years experience in project management of IT systems development for government agencies
5 years experience in the development of scheduling systems for government agencies
In depth knowledge of transportation highway engineering design processes and activities
In depth knowledge and experience with Project Management scheduling tool
Minimum of 3 years performing custom programming of software to meet business needs
Knowledge of the Unix operating system
Experience with Oracle databases
Ability to act as back up for the Senior IT Programmer
Experience in the development of training materials
PMP Certification (desirable)
Excellent written and oral communication skills
<i>The Project Manager must have CAT II software programming experience.</i>

Senior IT Programmer/Analyst

KEY PERSONNEL RESUME FORM

Resource Name:	Scott R. Habetler	
Role:	<i>Senior IT Programmer/Analyst</i>	
Associated with: (check one):	Prime Bidder ✓	
Percentage of Time to be allocated to Project	100%	

Contractor’s Senior IT Programmer/Analyst must possess the following skills and experience that qualify the individual for the duties and responsibilities on this project for this role. The experience requirements detailed in the contract are restated as follows:

Senior IT Programmer/Analyst Position Requirements
<i>3 years experience in the development of scheduling systems for government agencies</i>
<i>3 years experience in supporting Project management scheduling tools</i>
In depth knowledge of Transportation highway engineering design processes and activities
In depth knowledge of Oracle and other databases
Minimum of 3 years performing custom programming of software to meet business needs
Knowledge of the Unix operating system
Experience in the development of training materials
Excellent written and oral communication skills
<i>The Senior IT Programmer/Analyst must have CAT II software programming experience.</i>

Business Analyst

KEY PERSONNEL RESUME FORM

Resource Name:	<i>Melissa Tucker</i>	
Proposed Role:	<i>Business Analyst</i>	
Associated with: (check one):	Prime Bidder ✓	
Percentage of Time to be allocated to Project	<i>100%</i>	

Contractor’s Business Analyst must possess the following skills and experience that qualify the individual for the duties and responsibilities on this project for this role. The experience requirements detailed in the contract are restated as follows:

Business Analyst Position Requirement
Experience in the development of scheduling systems for government agencies
Experience using project management scheduling tools
Knowledge of Transportation highway engineering design processes and activities
Experience in performing training classes
Experience in the development of training materials

Article 1, Attachment C
Labor Rates

Labor Rates identified in [Article 1, Attachment A.](#)

Article 1, Attachment D
Deliverables

See [Article 1, Attachment J](#)

Article 1, Attachment E
Project Plan

Within five (5) working days of the award of the Contract, the Contractor will submit to the State project manager(s) for approval a **Final Work Plan**.



Article 1, Attachment F
Service Level Agreement

1. Availability – contractor shall provide normal services on-site Monday through Friday, between the hours of 7:30 a.m. to 5:30 p.m. Normal service includes 99.9% availability, with the exception of scheduled maintenance and other factors beyond contractor control. Help desk support is available during normal business hours, with escalation as necessary to senior technical/engineering staff, and then to higher management and/or senior management.
2. Support - Calls for support will be returned within 2 hours. Intranet help support documentation – including FAQs, training presentations, manuals, and guides, is available.
3. Usability – software and data interfaces shall maintain user-friendliness that enables trained users to interface in an efficient manner.
4. Reliability – system shall perform user requested functions applicable to the software 99.9% of the time without error.
5. Performance – Contractor shall ensure that current performance levels do not deteriorate. At present, the maximum number of simultaneous users has been 15, and no appreciable downgrade in performance has occurred. No performance complaints have been received. Any perceived changes in performance are related to what function a particular user is performing, i.e. database query time is related to the size of the dataset being referenced as well as the amount of records/data meeting the query. Typical response time is less than 10 seconds for the far greater majority of queries and database access.
6. Expandability – Contractor, in providing services, shall not make any modification affecting simultaneous use. The maximum number of simultaneous users since P/PMS was fully functional and operational has been 15. The current user license permit has a limit of 20 simultaneous users, which is not expected to be exceeded. P/PMS currently supports 348 direct users, with a capacity for an unlimited number of users and simultaneous user licenses.

Article 1, Attachment G
Technical Requirements

The system currently provides the requirements listed below. Contractor, in providing services, must ensure that the system continues to meet the listed requirements.

TECHNICAL REQUIREMENTS	
1. System Architecture	
a.	The system employs client/server architecture with an intelligent workstation client accessing a central database through software on a server.
b.	The system places no limit on record size.
c.	The software is expandable and portable, with specific reference to the system capacity requirements presented in this RFP.
d.	The system server is compatible with the State's technical architecture and is sized suitable for the system specified.
2. Programming Language	
a.	The system's client applications are written in <i>Unix</i> programming language.
3. RDBMS / Applications / Database Management	
a.	Full-text indexing and a full-text database search feature are available to provide easy retrieval of records.
4. Security	
a.	All computer information systems and applications operate in a secure manner and comply with State and federal security standards and regulations including the DIT 1350 Enterprise Security Policy and the 1410.7 Michigan State Government Network Security Policy as found on the websites: <u>Enterprise Security Policy</u> and <u>Michigan State Government Network Security Policy</u>
b.	The system must ensure that the integrity and confidentiality of data is protected by safeguards to prevent release of information without proper consent.
5. Security / Access Control	
a.	The system provides security at database, workstation, and individual operator levels.
b.	The system provides secure access control based upon unique user login, for types of record (e.g., fund, order) as well as by function performed upon the record (e.g., Display, Add, Edit, Delete.)
c.	The system checks each user's access privileges at login, and automatically disable or enables client functions (in real time) based upon the user's profile
d.	The system provides varying levels of access within the application, such as administrators, view only, or scheduling only.
6. Security/Password Controls	
a.	The system provides an enforced minimum length for passwords.
b.	The system provides users with the capability to change their own passwords.
c.	The system enters passwords in a non-display field.
d.	The system encrypts passwords when they are routed over the network.
e.	The system encrypts passwords in system storage.
7. Security/Activity Logging	
a.	Provides security reports of users and access levels.
b.	Provides detailed reports of backups completed and failed.
8. Software Package Specifications	
a.	The software will operate effectively on State hardware as defined by Vendor with Vendor-supplied upgrade recommendations
b.	The software operates in a recognized industry standard operating environment.
c.	The software allows the State, from PC workstations, to access and update all necessary information to complete a transaction.



TECHNICAL REQUIREMENTS
d. The software allows for the accurate and timely input and extraction of State data.
e. The software allows for processing of all identified State business.
f. The software provides identified data reporting capabilities.
g. The software provides a Graphical User Interface (GUI) that is user-friendly and provides data, calculation, reporting, and communication capabilities to State users.
h. The system is modular in design to accommodate phased implementation and future expansion.
i. Additional modules may be integrated into the system without a major impact to the installed components.
j. All modules of the system are integrated and designed to work together using a single input and a common database with no redundant data entry or data storage.
k. The system has the ability to accept batch entry from external sources while ensuring the same edits and validations as the online system.
l. Response times, at local and remote sites, for the major on-line processes stated above will meet business requirements.
m. The software provides the capability of transferring data to and from the host/server to the client for processing on other software packages.
9. Reporting
a. The software delivers standard reports.
b. The system includes ad-hoc query and reporting tools.
c. The online query capability enables non-technical end-users to extract information.
i. The State to control the information that appears on standard reports so that data security is maintained.
11. Audit Trail
a. The system enables the user to modify data entry transactions that have already been posted to the database while maintaining an audit trail of the change.
12. Edit and Validation Control
a. The system includes comprehensive field edits to prevent incomplete or incorrect data from entering the system
b. The system ensures data integrity and controls processing without hard-coded logic
13. Interfaces
a. The system has the ability to exchange data with other systems using the following mechanisms: online application to application, web services interface, FTP and SFTP, to and from magnetic media and using warehouse utilities to the State's data warehouse.

Article 1, Attachment H
General System Requirements

General system requirements are already in place. P/PMS currently provides the standard requirements listed below, as stated. Contractor, in providing services, must ensure that the system continues to meet the listed requirements.

GENERAL SYSTEM REQUIREMENTS	
1. Capacity	a. See Expandability bullet in the Statement of Work under 1.104.A.4 – Service Levels (Quality Requirements)
2. System Auditing	a. The system has the ability to maintain a historical record of all changes made to any item within the system (e.g., data element, business rule, process control, software program), the ID of the person or process that made the change, the before images of the affected data records, and the date and time the change was made.
	b. The system must ensure that all system events for software, hardware, interfaces, operating system, network, etc. are written to a system event log in a manner that facilitates debugging of all system problems.
	c. The system offers the ability to query, view, filter, and sort the system audit trail. The system is able to store the queries.
	d. The system has the ability to identify and track data back to its input source (e.g., imaged document, keyed from form, interface file, etc.).
3. Error Handling	a. The system must ensure that all errors are written to an error log.
	b. The system must allow for an administrator to archive error log entries based upon user-defined criteria.
4. Migration	a. Data will migrate smoothly to any future revision of the software and hardware (“smoothly” would be defined as having the system administrator follow Vendor-supplied written instructions to run a Vendor-supplied program or programs in batch mode to convert data, or any process that is simpler or more automatic than this).
5. Backup and Recovery	a. The system has the ability to provide a complete backup and recovery process for all database tables and system files.
	b. The system has the ability to create on request backups.
	a. The back up and archival features of the system can be initiated automatically or by manual request.
	c. The system software and data must be able to be restored to its previous operational status within four (4) hours after initiation of recovery process.

Article 1, Attachment I
Functional Requirements

The system currently provides the requirements listed below. Contractor, in providing services, must ensure that the system continues to meet the listed requirements.

Requirements
A. General System
1. The system contains on-line edits and warnings designed to identify and avoid data inconsistencies.
2. The system operates uniformly as a single system throughout the state. All functionality in the system is made available to all State employees throughout the field offices.
3. The system uses consistent methods to enter, update, and retrieve data. Users who understand one function of the system and feel comfortable navigating through it will feel comfortable navigating through all functions.
4. The system has a logical navigation order for each screen.
5. The system supports data entry processes by a series of edits, which provide integrity, validation, and consistency of format throughout the system.
6. The system provides the capability to confirm or undo changes, as well as prompt the user when required that data have not been properly entered.
7. The system allows export of reports to spreadsheet and database applications.
8. The system refreshes screen functionality automatically.
9. The system works within the existing agency and State technical environment.
10. The system is designed to eliminate data redundancy as much as possible and to prevent unnecessary movement through fields during data entry.
11. The system provides in-program help in system navigation and maneuvering.
12. The system is modular and flexible in design so that the system may be easily enhanced, expanded, and/or upgraded to meet future needs.
13. The system provides a database for the scheduler. This database holds the majority of data associated with the scheduler portion of P/PMS (project networks, baseline data, templates and task and milestones standards and matrices). Users have the ability to modify and update certain data by project.
14. The system is capable of comparing and reporting planned versus actual dates, labor-hours and resource costs, by task and by work unit, for a task, group of tasks, project or group of projects, or for programs.
15. The system provides the capability for each work unit to enter, review, and analyze project and program data to display and/or print reports using multiple sort and selection criteria. The system provides the capability to automatically create and display, print, and plot a network of activities and their schedules; calculate and identify critical paths; display, print, and plot Gantt charts (horizontal bar charts) indicating start and finish dates; calculate and identify float and stage of completion; and provide information on resource availability overloads and underloads to the various work units for better resource management.
16. The system carries activity start and finish dates which reflect the original baseline dates, as well as current schedule (early) dates, the programmed/approved (late) dates, and actual dates.
17. The system provides tools to analyze existing and historical information to use in refining network generation standards.
18. The system can roll-up schedule labor and cost information through a Work Breakdown Structure and Organizational Breakdown Structure.
19. The system allows for changes in status as a project moves through the standard life cycle, both in the Department and through P/PMS. Project status may be changed to Proposed, Authorized, Suspended, Abandoned, Historical, or Archived as the project progresses in the Department. Project status may be New, Ungenerated, Generic, Unrefined, Refined, and Programmed as a project progresses through P/PMS. Security restrictions control when, and by whom project statuses may be changed.
B. Project Management – Job/Project Area
1. The system utilizes project management methodology for schedule development: <ul style="list-style-type: none"> a. The system provides a critical path network generator to build project networks based on project



Requirements

<p>characteristics, work assignments, and project location, utilizing templates that are subsets of the overall process.</p> <p>b. The system can automatically create a network and schedule/logic diagrams for a project, and adjusts initial activities, and their durations and resource requirements for different work types and different sets of project characteristics and job locations.</p> <p>c. Networks generated by this module are readily available for use or modification by Department managers. The networks use department standard tasks and milestones.</p>
<p>2. The system provides a list of tasks for each project, and the ability to sort and view by task number, float, scheduled dates (early dates), or approved dates (late dates).</p>
<p>3. The system provides an interface with DCDS to obtain actuals, and supports the ability to manually adjust/override HOT distribution.</p>
<p>4. The system allows users to systematically develop a master schedule of all projects in the highway program, with consideration given to the priority of projects, availability of staff resources, and allocation of staff resources to avoid overloads and underloads in any work unit.</p>
<p>5. The system provides the capability to monitor and update the status of activities, projects, and programs with respect to schedule dates (start, finish, milestone, and stage of completion); resource development costs; and staffing requirements and assignments at any time on an ad hoc basis.</p>
<p>6. The system provides the capability for the user to easily create and conduct a simulation ("what-if") analysis to select the most appropriate schedule, plan and forecast resources, and analyze potential problem areas without the need for programmer assistance.</p>
<p>7. The system has the ability to create a single network for a single project with the ability to report under individual job numbers and templates.</p>
<p>8. The system allows changes in the system-generated activity schedules and network to make the network unique to the project. The adjustments include: changing task durations; adding, deleting and/or revising resource requirements; adding and/or deleting tasks and milestones; adding, deleting and/or revising task dependencies.</p>
<p>9. The system locks task duration changes for sensitive tasks such as real estate tasks, where only real estate staff can change task durations.</p>
<p>10. The system has the ability to enter progress information, and add or change project information in any of the following formats:</p> <ul style="list-style-type: none"> a. Activity Actual Start Date, b. Activity Actual Finish Date, or c. Activity Estimated Completion Date.
<p>11. The system calculates anticipated estimated preconstruction labor cost based on the scheduled labor hours and an average labor rate for each work unit.</p>
<p>12. The system saves the original dates and resource requirements to compare current schedules against the original plan.</p>
<p>13. The system maintains each work unit's actual labor hours by task for each project.</p>
<p>14. The system provides a method to obtain time sheet reported actual labor hours and associated resource costs from the payroll system (DCDS) on a bi-weekly basis; summarizes individual labor hours and associated resource costs by project, task and resource/work unit; and inserts the summarized data fields into the proper jobs in P/PMS to allow comparisons of planned versus actual labor hours, and associated resource costs.</p>
<p>15. The system provides reports to evaluate project progress, such as exception reports, resource requirement reports, cost reports, roll-up reports, etc., in screen display, printout, or graphic plot format. Reports have select and sort options on at least the following items: project manager, work unit, region, type of project, type of funding, year of completion, and variance in planned versus actual completion date.</p>
<p>16. The system allows consultants to send task actual dates and labor hours to project manager for review.</p>
<p>17. The system allows for simulations to evaluate various alternatives involving changes to the project characteristics. In addition, it provides the capability to evaluate changes in a network using a simulation made without disturbing an existing project's tasks and milestones, dependencies, duration and resource requirements.</p>



Requirements

C. Program Management – Program Area

1. The system provides the capability to replace the original project or network with the preferred simulation.
2. The system allows for moving project information and network into a designated area for historical information. Allows the ability to browse archived project data or create reports.
3. The system includes specific project management features that aid MDOT in developing, monitoring and analyzing the Department's current, annual and five year highway programs, such as cost performance comparisons and earned value of work performed.
4. The system provides for a Work Breakdown Structure (WBS) with the capability to roll-up task, hours, and cost information through a hierarchy such as activity, summary activity, phase, project and program.
5. The system provides for an Organization Breakdown Structure (OBS) with the capability to roll-up information, including resource demands and cost, by DCDS index code, through the organizational hierarchy such as unit, section, division, region, office, bureau, and department.
6. The system has the ability to archive data/reports for later recovery, and the ability to copy networks from an existing project into a new project. It also has the ability to import/export data to other sources such as Excel, etc.
7. The system provides reports used to evaluate the program such as project completion dates, exception reports, resource utilization reports, cost reports, roll-up reports, milestone reports, etc. It provides flexible sorting and data views, reports on every field, and comparative reporting ability.
8. The system can create simulations of the program, using different sets of user selected projects to determine the preferred alternative without disturbing the current program.
9. The system provides the ability to replace the Master Program with the preferred simulation alternative.
10. The system is capable of providing various program-level scenarios. The scenarios should provide information on resource requirements, resource availability, and project schedules for programs of various mixes of projects. The scenarios should use actual progress on projects under way.
11. The system can create simulations to evaluate various staffing scenarios without disturbing current work assignments and staff availabilities.
12. The system provides the ability to schedule activities based on constraints of either resources or time (schedule) and designated priority.

D. Data Administration – Administration Area (Administrators only)

1. The system maintains a modifiable database containing basic project management methodologies, including a WBS, an OBS, a Global Template, and numerous sub-templates.
2. The system maintains tasks in a WBS with specific standard parameters that consist of a base duration and labor hours kept in this area.
3. The system is able to modify tasks' bases via a database matrix of standard modifiers from this area, in combination with an algebraic algorithm and identified job characteristics (job scope items).
4. The system database contains standard tables governing work unit assignment to tasks based on work type and location.
5. The system has portions of the database dedicated to data validation, containing all valid responses to various data entry fields for ease of user-friendly software use.
6. The system contains separate calendars for use in P/PMS, including yearly, Federal, State, and Letting Dates.
7. The system has the ability to view all information pertaining to archived jobs.
8. The system contains various utilities enabling administrators to check on and manipulate the user environment, including data entry type, print/plot status, file viewing/deleting, etc.
9. The system enables performance of user administration functions, with System Administrator collaboration.
10. The system allows modifications to standards information to parallel changes in department tasks, organization, and processes.
11. The system has a Configuration and Control database/module to track changes to standards, whom they were made by, when, and why.

Article 1, Attachment J
Tasks and Deliverables

The following is list of tasks and major deliverables for this project. The Contractor is not, however, constrained from supplementing this listing with additional steps, sub tasks or elements deemed necessary to permit the development of alternative approaches or the application of proprietary analytical techniques.

An overall plan must be developed as a basis for executing subsequent steps as the project progresses. Essential to the process of this task is the preparation of a sound approach to attaining the objectives of the project.

System Support & Maintenance –
Tasks related to user support, training and daily system operation.

1.1 Project Management

Use Project Management Methodologies to direct and manage the P/PMS team to meet objectives.

Run bi-weekly P/PMS Support Team (MDOT and Consultant) status meetings. During this meeting provide a status report that outlines the tasks/milestones that have been accomplished and the progress on active tasks. Any deviations from the work plan will be indicated in the report. The report shall also include upcoming activities and identify the resources assigned to accomplish those activities. Activities will be prioritized and assigned during this meeting to ensure requests are addressed based on business need.

Represent P/PMS at various business team meetings when requested. Be available to meet with Department management/leadership as requested. This may include statewide travel to Region and Transportation Service Centers (TSCs).

Deliverables – Bi-weekly status reports. Development of presentation materials as needed for meeting with management/leadership. Create a high performing Support Team that accomplishes objectives in an efficient and **timely** manner.

1.2 User Support

Assistance and informal training for statewide users (Program Managers, System Managers, Cost and Scheduling Engineers, Program Scheduling Specialists, Project Managers, Project Scheduling Specialists and Support Units) with P/PMS operation. Provide assistance with network creation, network updates, running reports and setting baselines. Provide critical path analysis to determine the extent and nature of problems causing project delay. Assist with resolution of resource overloads. Assist Support Units with input of actual dates and reporting for resource utilization and task scheduling. Provide information for P/PMS and Program performance metrics. Perform help desk activities to troubleshoot user problems. Provide users with an understanding of project management methodologies when needed. Make global changes to active networks when business processes change. Provide informal and/or on-the-job training to designated MDOT P/PMS personnel to enable them to perform this task. Mentoring and training of State staff shall be provided by Contractor in preparation for transitioning the operation and support to the State of Michigan staff.

Assist with Newsletter publications, user notifications and marketing of the P/PMS. Use these methods to communicate changes and enhancements to the system.

Deliverable - Timely support of P/PMS users. Provide a detailed log of support performed using MDOT’s LogITTs ticket reporting system that describes each support request and what solution was provided. When requested provide information for newsletters, user notifications and marketing material that is written in a professional manner. Perform error free data entry and modification of networks when needed.

1.3 Formal User Training

Provide assistance with statewide training in software usage and Project Management concepts. Provide informal “one on one” training when requested. Several different classes are offered depending on the

students roles in the organization. Provide up to date training course and materials that incorporate all current system enhancements. Keep a detailed log of those that attended training classes. Measure performance of instructor(s), course materials, classroom facilities and class content with evaluations. This may require statewide travel. Any travel requiring overnight accommodations must be pre-approved by the MDOT Project Manager.

Training is provided as part of the cost of the services, to include:

- User training
- Technical training for State individuals who will be working with the services vendor to configure the applications including establishing databases and interfaces, data conversion, customization, and upgrading the customized software.
- System administration training for State personnel who will be responsible for ongoing maintenance and administration of the system, including security.

Training is provided in a variety of formats for product installation, use, and administration for a variety of levels (e.g. basic, advanced, refresher, etc.).

All training manuals, training plans and other documentation provided become the property of the State.

Deliverables - Timely training for users. Training materials shall be kept up to date with all changes made to P/PMS. Provide lists of attendees for each training class along with completed evaluations. In the event of below average evaluations make changes to course and/or materials to achieve positive results.

1.4 Ad-Hoc reporting

MDOT management and leadership often request Ad-Hoc reports. This requires database queries to generate the information in a timely manner. This requires in depth knowledge of the fields and tables of the database to efficiently generate information. Requests frequently provide minimal time for report creation.

Deliverables – Reports created in a **timely** manner that present clear and concise information. Contractor must be able to quickly and correctly interpret requests. Reports generated must be accurate.

1.5 Ad-Hoc Analysis

MDOT management and leadership often request Ad-Hoc analysis of existing data and what if scenarios. This may require generation of reports, database queries and data input prior to analysis. Generate information for template refinement and standards validation so that the system can be refined to better predict schedules. This includes analysis of actual labor charges, durations, hands on time, work types and job locations. This effort may include creation of scripts that process available data and generate reports, as well as requests reflecting changes in MDOT design processes and/or additional/deleted/combined tasks. Upon analysis any recommendations will be evaluated by P/PMS Team for concurrence prior to implementation.

Deliverables – Analysis performed in a **timely** manner which presents information in a clear and concise manner. Contractor must be able to quickly and correctly interpret requests. Reports generated must be accurate. Provide a yearly report indicating all changes to templates and standards that have been implemented during the previous year.

1.6 General Maintenance

Perform general maintenance of the system. In the event of system failure troubleshoot the problems to get the system back online. Assist MDIT with server configuration and fine tuning of the system. Assist MDIT with system printer connections and setup. Assist MDIT with setup of new user accounts. Implement new CAT II software versions. Provide break/fix and troubleshooting to maintain system availability. Monitor system processes for irregularities during scheduled activities. Troubleshoot data inconsistencies.



Deliverables – System up time comparable to similar production software at MDOT. System data and calculations are reliable and accurate. User accounts and printer connections are completed in a timely manner. Assist in keeping a log of user account changes and printer connection setup.

1.7 Documentation

Keep current documentation up to date with changes to the system. This includes the User Manual, Task Manual, Job Characteristics Manual and System Manuals. Provide timely updates to existing manuals that incorporate any changes to the system. One draft of updated manuals or materials will be provided to the MDOT personnel for review prior to the completion of the final document.

A minimum of two (2) copies of the following documentation in an electronic format, online and in hard copy will be provided:

- User and Technical Manuals - On-line and Hard Copy
- Data Element Dictionary
- Operations Manual
- All updates of documentation during the term of the Contract, software license, and maintenance agreement

The following documentation is provided for all modules and program development:

- System-wide documentation and specifications
- Baseline End-User training manuals to be used as a basis for “User Manuals” and online help
- Installation procedure
- Module configuration documents sufficient for configuration maintenance purposes
- Specification documentation

The documentation of components, features, and use of the hardware/software shall be detailed such that resolution of most problems can be determined from the documentation, and most questions can be answered.

All system, operational, user, change, and issue documentation must be available in electronic format, published to an intranet website, accessible to State users, updated regularly, with unique numerical identifiers for each section and be consistent with the most current version of the application(s) and three (3) previous versions.

All system, operations, user, change and issue documentation is to be organized in a format, which is approved by the State and facilitates updating and allows for revisions to the documentation to be clearly identified including the three (3) previous versions.

The Contractor must develop and submit for State approval complete, accurate, and timely system, operations, and user documentation.

The Contractor must notify the State of any discrepancies or errors outlined in the system, operations, and user documentation.

Deliverables - Organization and content of the documentation will be approved by the P/PMS Support Team. All manuals are to be provided in Microsoft Word format. All changes in internal processes will be documented within 2 weeks of the change.

System Enhancements-

Tasks related to creation of new software code.

2.1 Modifications

Make changes to the system code and database to meet current business needs. This could include new system capabilities, changes to current processes, development of new standard reports and changes to existing standard reports. Develop a good understanding of business requirements prior to developing software code. Follow MDIT software development life cycle process to promote software from test to



quality assurance to production. All changes to P/PMS code will be tracked in the Configuration and Requirements Tracking (CART) application where the date and reason for change are documented. Additionally, all previous versions of program changes will be retained. This provides an audit of all system changes as well as the ability to revert to previous program versions to remove a change if necessary.

Deliverables – Create work plan for all deliverables that include work hour estimates, resources involved and estimated completion dates. Specify all State of Michigan resources required to complete the work plan. Track actual hours and completion dates. Create code to State of Michigan standards that is bug free. Provide information to business area for appropriate testing prior to production.

2.2 Interfacing

P/PMS is integrated with the MAP database, ProjectWise database, shares data with MPINS, DCDS and is providing data for generation of reports through the Intranet. As other systems are implemented P/PMS will need to be modified in order to take advantage of information available in those systems. Similarly, if changes are made in systems with which P/PMS is already integrated, modifications may be needed to continue to share data with those systems. Improved interfaces with DCDS and MAIN are desired to show total costs on a project including overtime, equipment, supplies and travel costs. These services also include changes necessary to continue or create uploads of information from other sources (payroll, engineering consultant reporting, etc.).

Deliverables – Create work plan for all deliverables that include work hour estimates, resources involved and estimated completion dates. Specify all State of Michigan resources required to complete the work plan. Track actual hours and completion dates. Provide information to business area for appropriate testing prior to promotion to production.

2.3 Data Migration

In the event that a decision is made, to create the next generation of P/PMS, assist in data migration and conversion to the new system. Provide assistance with defining the current database, tables and fields. Assist with mapping data from the old system to the new system. Create methods to port historical data, standards, templates, breakdown structures, etc. to the new system. Work with new system to generate reports that are similar to the current system. Assist in training new system representatives on the culture, processes and current IT systems in place at MDOT. Assist with the conversion to the new system.

Deliverables – Create work plan for all deliverables that include work hour estimates, resources involved and estimated completion dates. Specify all State of Michigan resources required to complete the work plan. Track actual hours and completion dates. Collaborate with new system representatives to develop a detailed mapping of existing tables/data fields to the tables/data fields of the new system. Fulfill requests for information from the representatives of the new system in a timely manner.

Article 2 – General Terms and Conditions

2.010 CONTRACT STRUCTURE AND ADMINISTRATION

2.011 DEFINITIONS

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

- (a) “Days” means calendar days unless otherwise specified.
- (b) “24x7x365” means 24 hours a day, seven days a week, and 365 days a year (including the 366th day in a leap year).
- (c) “Additional Service” means any Services/Deliverables within the scope of the Contract, but not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration. “Additional Service” does not include New Work.
- (d) “Amendment Labor Rates” means the schedule of fully-loaded hourly labor rates attached as [Article 1, Attachment A](#)
- (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. a description of the Services to be performed by Contractor under the Statement of Work;



- b. 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;
 - c. 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;
 - d. 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;
 - e. 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;
 - f. a listing of any Key Personnel of Contractor and/or its Subcontractors for that Statement of Work and any future Statements of Work;
 - g. 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 Purchasing Operations, State of Michigan, Department of Management and Budget, hereinafter known as Purchasing Operations and the Department of Information Technology, hereinafter known as DIT for the Michigan Department of Transportation, hereinafter known as MDOT. Where actions are a combination of those of Purchasing and the State agencies, the authority will be known as the State.

Purchasing Operations is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. **Purchasing Operations is the only State office authorized to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of this Contract.** The Contractor Administrator within Purchasing Operations for this Contract is:

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

2.015 **CONTRACT COMPLIANCE INSPECTOR**

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

[Cindy Turben](#)
 Department of Information Technology
 Constitution Hall, Atrium South Tower
 525 W. Allegan St
 Lansing, MI 48933
 Email: TurbenC@michigan.gov
 Phone: 517-335-6069

2.016 PROJECT MANAGER

The following individual will oversee the project:

Daniel Belcher
 Department of Transportation
 Van Wagoner Building
 425 W. Ottawa Street
 Lansing, MI 48909
 Email: BelcherD@michigan.gov
 Phone: 517-335-2182

2.020 CONTRACT OBJECTIVES/SCOPE/BACKGROUND

2.021 BACKGROUND

See Article 1 (Section 1.002 PROJECT REQUEST)

2.022 PURPOSE

See Article 1 (Section 1.001 PROJECT REQUEST)

2.023 OBJECTIVES AND SCOPE

See Article 1.

2.024 INTERPRETATION

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

2.025 FORM, FUNCTION AND UTILITY

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

2.030 LEGAL EFFECT AND TERM

2.031 LEGAL EFFECT

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

2.032 CONTRACT TERM

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

2.033 Renewal(s)

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

2.040 CONTRACTOR PERSONNEL

2.041 CONTRACTOR PERSONNEL

- (a) Personnel Qualifications. All persons assigned by Contractor to the performance of Services under this Contract shall be employees of Contractor or its majority-owned (directly or indirectly, at any tier) subsidiaries (or a State-approved Subcontractor) and shall be fully qualified to perform the work assigned to them. Contractor shall include a similar provision in any subcontract entered into with a Subcontractor. For the purposes of this Contract, independent contractors engaged by Contractor solely in a staff augmentation role shall be treated by the State as if they were employees of Contractor for this Contract only; however, the State understands that the relationship between Contractor and Subcontractor is an independent contractor relationship.
- (b) Key Personnel
 - (i) In discharging its obligations under this Contract, Contractor shall provide the named Key Personnel on the terms indicated. [Article 1, Attachment B](#) provides an organization chart showing the roles of certain Key Personnel, if any.
 - (ii) Key Personnel shall be dedicated as defined in [Article 1, Attachment B](#) to the Project for its duration in the applicable Statement of Work with respect to other individuals designated as Key Personnel for that Statement of Work.
 - (iii) The State will have the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the State of the proposed assignment, will introduce the individual to the appropriate State representatives, and will provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State will provide a written explanation including reasonable detail outlining the reasons for the rejection. Additionally, the State's request shall be based on legitimate, good-faith reasons. Proposed alternative for the individual denied, shall be fully qualified for the position.
 - (iv) Contractor shall not remove any Key Personnel from their assigned roles or the Contract without the prior written consent of the State. If the Contractor does remove Key Personnel without the prior written consent of the State, it shall be considered an unauthorized removal ("Unauthorized Removal"). It shall not be considered an Unauthorized Removal if Key Personnel must be replaced for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation or for cause termination of the Key Personnel's employment. It shall not be considered an Unauthorized Removal if Key Personnel must be replaced because of promotions or other job movements allowed by Contractor personnel policies or Collective Bargaining Agreement(s) as long as the State receives prior written notice before shadowing occurs and Contractor provides thirty (30) days of shadowing unless parties agree to a different time period. The Contractor with the State shall review any Key Personnel replacements, and appropriate transition planning will be established. Any Unauthorized Removal may be considered by the State to be a material breach of the Contract, in respect of which the State may elect to exercise its rights under **Section 2.210**.
 - (v) It is acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of the Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under **Section 2.210**, the State may assess liquidated damages against Contractor as specified below.

For the Unauthorized Removal of any Key Personnel designated in the applicable Statement of Work, the liquidated damages amount shall be \$25,000.00 per individual provided Contractor identifies a replacement approved by the State pursuant to **Section 2.041** and assigns the replacement to the



Project to shadow the Key Personnel s/he is replacing for a period of at least **thirty (30)** days prior to such Key Personnel's removal.

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

- (c) Re-assignment of non-Key Personnel. Prior to re-deploying to other projects, at the completion of their assigned tasks on the Project, teams of its non-Key Personnel who are performing Services on-site at State facilities or who are otherwise dedicated primarily to the Project, Contractor will give the State at least ten (10) Business Days notice of the proposed re-deployment to give the State an opportunity to object to the re-deployment if the State reasonably believes such team's Contract responsibilities are not likely to be completed and approved by the State prior to the proposed date of re-deployment.
- (d) Re-assignment of Personnel at the State's Request. The State reserves the right to require the removal from the Project of Contractor personnel found, in the judgment of the State, to be unacceptable. The State's request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good-faith reasons. Replacement personnel for the removed person shall be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with removed personnel results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Service will not be counted in **Section 2.076** for a time as agreed to by the parties.
- (e) Staffing Levels.
 - (i) All staff requirements not specified in the applicable Statement of Work or State-approved project plan as State personnel will be supplied by Contractor. This includes secretarial, clerical and Contract administration support staff necessary for Contractor to perform its obligations hereunder.
 - (ii) Contractor shall provide sufficient personnel resources for the completion of Contract tasks indicated in Contractor's project plan approved by the State. If the level of personnel resources is insufficient to complete any Contractor Contract tasks in accordance with the Contract time schedule as demonstrated by Contractor's failure to meet mutually agreed to time schedules, Contractor shall promptly add additional qualified personnel resources to the performance of the affected tasks, at no additional charge to the State, in an amount sufficient to complete performance of Contractor's tasks in accordance with the Contract time schedule.
- (f) Personnel Turnover. The Parties agree that it is in their best interests to keep the turnover rate of employees of Contractor and its Subcontractors who are performing the Services to a reasonable minimum. Accordingly, if the State determines that the turnover rate of such employees is excessive and so notifies Contractor, Contractor will meet with the State to discuss the reasons for the turnover rate and otherwise use commercially reasonable efforts to minimize such turnover rate. If requested to do so by the State, Contractor will submit to the State its proposals for reducing the turnover rate to an acceptable level. In any event, notwithstanding the turnover of personnel, Contractor remains obligated to perform the Services without degradation and in accordance with the State-approved Contract schedule.
- (g) Location. All staff assigned by Contractor to work on the Contract will perform their duties either primarily at Contractor's offices and facilities or at State facilities. Without limiting the generality of the foregoing, Key Personnel will, at a minimum, spend at least the amount of time on-site at State facilities



as indicated in the applicable Statement of Work. Subject to availability, selected Contractor personnel may be assigned office space to be shared with State personnel.

2.042 CONTRACTOR IDENTIFICATION

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

2.043 COOPERATION WITH THIRD PARTIES

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

2.044 SUBCONTRACTING BY CONTRACTOR

- (a) Contractor shall have full responsibility for the successful performance and completion of all of the Services and Deliverables. The State will consider Contractor to be the sole point of contact with regard to all contractual matters under this Contract, including payment of any and all charges for Services and Deliverables.
- (b) Contractor shall not delegate any duties under this Contract to a Subcontractor unless the Department of Management and Budget, Purchasing Operations has given written consent to such delegation. The State shall have the right of prior written approval of all Subcontractors and to require Contractor to replace any Subcontractors found, in the reasonable judgment of the State, to be unacceptable. The State's request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good-faith reasons. Replacement Subcontractor(s) for the removed Subcontractor shall be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed Subcontractor, the State will agree to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with a removed Subcontractor results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in **Section 2.076** for a time agreed upon by the parties.
- (c) In any subcontracts entered into by Contractor for the performance of the Services, Contractor shall require the Subcontractor, to the extent of the Services to be performed by the Subcontractor, to be bound to Contractor by the terms of this Contract and to assume toward Contractor all of the obligations and responsibilities that Contractor, by this Contract, assumes toward the State. The State reserves the right to receive copies of and review all subcontracts, although Contractor may delete or mask any proprietary information, including pricing, contained in such contracts before providing them to the State. The management of any Subcontractor will be the responsibility of Contractor, and Contractor shall remain responsible for the performance of its Subcontractors to the same extent as if Contractor had not subcontracted such performance. Contractor shall make all payments to Subcontractors or suppliers of Contractor. Except as otherwise agreed in writing by the State and Contractor, the State will not be obligated to direct payments for the Services other than to Contractor. The State's written approval of any Subcontractor engaged by Contractor to perform any obligation under this Contract shall not relieve Contractor of any obligations or performance required under this Contract. Attached as **Exhibit A** is a list of the Subcontractors, if any, approved by the State as of the execution of this Contract, together with a copy of the applicable subcontract.
- (d) Except where specifically approved in writing by the State on a case-by-case basis, Contractor shall flow down the obligations in **Sections 2.040, 2.110, 2.150, 2.160, 2.171(c), 2.172(b), 2.180, 2.260, 2.276, 2.297** in all of its agreements with any Subcontractors.



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

2.045 CONTRACTOR RESPONSIBILITY FOR PERSONNEL

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

2.050 STATE STANDARDS

2.051 EXISTING TECHNOLOGY STANDARDS

The Contractor will adhere to all existing standards as described within the comprehensive listing of the State’s existing technology standards at http://www.michigan.gov/documents/1460_162823_7.00.doc

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.



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

2.062 SOFTWARE

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

2.063 HARDWARE

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

Contractor's recommended hardware platform/topology must provide for optimal functioning in the following areas:

- i. Communication line speed for distributed entry functions and major online processes of departments and offices located in various areas of the State.
- ii. Processing the volumes presented and any increases in volume that can be expected through the implementation of the proposed system.
- iii. Remote access and administration
- iv. Application installation, administration and support

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 Unauthorized Removal of Key Staff as defined in **Section 2.041 (b)** 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 Unauthorized Removal of Key Staff 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 **Section 2.041 (b)**.

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)

- (a) SLAs will be completed with the following operational considerations:
 - (i) SLAs will not be calculated for individual Incidents where any event of Excusable Failure has occurred as defined in **Section 2.202**,
 - (ii) SLAs will not be calculated for individual Incidents where loss of service is planned and where the State has received prior notification and/or coordination.



- (iii) SLAs will not apply if the applicable Incident could have been prevented through planning proposed by Contractor and not implemented at the request of the State. In order to invoke this consideration, complete documentation relevant to the denied planning proposal must be presented to substantiate the proposal.
- (iv) Time period measurements will be based on the time Incidents are received by the Contractor and the time that the State receives notification of resolution based on 24x7x365 time period, except that the time period measurement will be suspended based on the following (“Stop-Clock Conditions”):
 1. Time period(s) will not apply where Contractor does not have access to a physical State Location and where access to the State Location is necessary for problem identification and resolution.
 2. Time period(s) will not apply where Contractor needs to obtain timely and accurate information or appropriate feedback and is unable to obtain timely and accurate information or appropriate feedback from the State.
 - a. Chronic Failure for any Service(s) will be defined as three (3) unscheduled outage(s) or interruption(s) on any individual Service for the same reason or cause or if the same reason or cause was reasonably discoverable in the first instance over a rolling thirty (30) day period. Chronic Failure will result in the State’s option to terminate the effected individual Service(s) and procure them from a different vendor for the chronic location(s) with Contractor to pay the difference in charges for up to three (3) additional months. The termination of the Service will not affect any tiered pricing levels.
 - b. Root Cause Analysis will be performed on any Business Critical outage(s) or outage(s) on Services when requested by the Contract Administrator. Contractor will provide its analysis within two (2) weeks of outage(s) and provide a recommendation for resolution.
 - c. All decimals shall be rounded to two decimal places with 5 and greater rounding up and 4 and less rounding down unless otherwise specified.

2.080 DELIVERY AND ACCEPTANCE OF DELIVERABLES

2.081 DELIVERY OF DELIVERABLES

[Article 1, Attachment D](#) contains a list 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”) or a Custom Software Deliverable. 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 this Contract.

Prior to delivering any Deliverable to the State, Contractor will first perform all required quality assurance activities, and, in the case of Custom Software Deliverables, System Testing to verify that the Deliverable is complete and in conformance with its specifications. Before delivering a Deliverable 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 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.

In discharging its obligations under this Section, Contractor shall be at all times (except where the parties agree otherwise in writing) in compliance with Level 3 of the Software Engineering Institute’s Capability Maturity Model for Software (“CMM Level 3”) or its equivalent.

2.082 CONTRACTOR SYSTEM TESTING

Contractor will be responsible for System Testing each Custom Software Deliverable in Contractor’s development environment prior to turning over the Custom Software Deliverable to the State for User



Acceptance Testing and approval. Contractor's System Testing shall include the following, at a minimum, plus any other testing required by CMM Level 3 or Contractor's system development methodology:

Contractor will be responsible for performing Unit Testing and incremental Integration Testing of the components of each Custom Software Deliverable.

Contractor's System Testing will also include Integration Testing of each Custom Software Deliverable to ensure proper inter-operation with all prior software Deliverables, interfaces and other components that are intended to inter-operate with such Custom Software Deliverable, and will include Regression Testing, volume and stress testing to ensure that the Custom Software Deliverables are able to meet the State's projected growth in the number and size of transactions to be processed by the Application and number of users, as such projections are set forth in the applicable Statement of Work.

Contractor's System Testing will also include Business Function Testing and Technical Testing of each Application in a simulated production environment. Business Function Testing will include testing of full work streams that flow through the Application as the Application will be incorporated within the State's computing environment. The State shall participate in and provide support for the Business Function Testing to the extent reasonably requested by Contractor. Within ten (10) days before the commencement of Business Function Testing pursuant to this Section, Contractor shall provide the State for State review and written approval Contractor's test plan for Business Function Testing.

Within five (5) Business Days following the completion of System Testing pursuant to **Section 2.080**, Contractor shall provide to the State a testing matrix establishing that testing for each condition identified in the System Testing plans has been conducted and successfully concluded. To the extent that testing occurs on State premises, the State shall be entitled to observe or otherwise participate in testing under this Section as the State may elect.

2.083 APPROVAL OF DELIVERABLES, IN GENERAL

All Deliverables (Written Deliverables and Custom Software Deliverables) 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, in the case of Custom Software Deliverables, will include the successful completion of State User Acceptance Testing, 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.

The State's obligation to comply with any State Review Period is conditioned on the timely delivery of Deliverables being reviewed. If Contractor fails to provide a Deliverable to the State in a timely manner, the State will nevertheless use commercially reasonable efforts to complete its review or testing within the applicable State Review Period.

Before commencement of its review or testing of a Deliverable, the State may inspect the Deliverable to confirm that all components of the Deliverable (e.g., software, associated documentation, and other materials) have been delivered. If the State determines that the Deliverable is incomplete, the State may refuse delivery of the Deliverable without performing any further inspection or testing of the Deliverable. Otherwise, the review period will be deemed to have started on the day the State receives the Deliverable and the applicable certification by Contractor in accordance with **Section 2.080**.

The State will approve in writing a Deliverable upon confirming that it conforms to and, in the case of a Custom Software Deliverable, performs in accordance with, its specifications without material deficiency. The State may, but shall not be required to, conditionally approve in writing a Deliverable 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 that remain outstanding at the time of State approval.



If, after three (3) opportunities (the original and two repeat efforts), Contractor is unable to correct all deficiencies preventing State approval of a Deliverable, 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 this 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 and will pay the State an additional sum equal to ten percent (10%) of such excess expenditure to cover the State's general expenses without the need to furnish proof in substantiation of such general expenses; or (iii) terminate this Contract for default, either in whole or in part by notice to Contractor (and without the need to afford Contractor any further opportunity to cure). 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.

The State, at any time and in its own discretion, may halt the UAT or approval process if such process reveals deficiencies in or problems with a Deliverable 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 return the applicable Deliverable to Contractor for correction and re-delivery prior to resuming the review or UAT process and, in that event, Contractor will correct the deficiencies in such Deliverable in accordance with the Contract, as the case may be.

Approval in writing of a Deliverable by the State shall be provisional; that is, such approval shall not preclude the State from later identifying deficiencies in, and declining to accept, a subsequent Deliverable based on or which incorporates or inter-operates with an approved Deliverable, to the extent that the results of subsequent review or testing indicate the existence of deficiencies in the subsequent Deliverable, or if the Application of which the subsequent Deliverable is a component otherwise fails to be accepted pursuant to **Section 2.080**.

2.084 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 Written 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 Written Deliverable is approved in the form delivered by Contractor or describing any deficiencies that must be corrected prior to approval of the Written Deliverable (or at the State's election, subsequent to approval of the Written Deliverable). If the State delivers to Contractor a notice of deficiencies, Contractor will correct the described deficiencies and within five (5) 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 Written 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 Written Deliverable to confirm that the identified deficiencies have been corrected.

2.085 PROCESS FOR APPROVAL OF CUSTOM SOFTWARE DELIVERABLES

The State will conduct UAT of each Custom Software Deliverable in accordance with the following procedures to determine whether it meets the criteria for State approval – i.e., whether it conforms to and performs in accordance with its specifications without material deficiencies.

Within thirty (30) days (or such other number of days as the parties may agree to in writing) prior to Contractor's delivery of any Custom Software Deliverable to the State for approval, Contractor shall provide to the State a set of proposed test plans, including test cases, scripts, data and expected outcomes, for the State's use (which the State may supplement in its own discretion) in conducting UAT of the Custom Software Deliverable. Contractor, upon request by the State, shall provide the State with reasonable assistance and support during the UAT process.

For the Custom Software Deliverables listed in [Article 1, Attachment D](#), the State Review Period for conducting UAT will be as indicated in [Article 1, Attachment D](#). For any other Custom Software Deliverables not listed in [Article 1, Attachment D](#), the State Review Period shall be the number of days agreed in writing by the parties (failing which it shall be forty-five (45) days by default). The State Review Period for each Custom Software Deliverable will begin when Contractor has delivered the Custom Software Deliverable to the State accompanied by the certification required by **Section 2.080** and the State’s inspection of the Deliverable has confirmed that all components of it have been delivered.

The State’s UAT will consist of executing test scripts from the proposed testing submitted by Contractor, but may also include any additional testing deemed appropriate by the State. If the State determines during the UAT that the Custom Software Deliverable contains any deficiencies, the State will notify Contractor of the deficiency by making an entry in an incident reporting system available to both Contractor and the State. Contractor will modify promptly the Custom Software Deliverable to correct the reported deficiencies, conduct appropriate System Testing (including, where applicable, Regression Testing) to confirm the proper correction of the deficiencies and re-deliver the corrected version to the State for re-testing in UAT. Contractor will coordinate the re-delivery of corrected versions of Custom Software Deliverables with the State so as not to disrupt the State’s UAT process. The State will promptly re-test the corrected version of the Software Deliverable after receiving it from Contractor.

Within three (3) business days after the end of the State Review Period, the State will give Contractor a written notice indicating the State’s approval or rejection of the Custom Software Deliverable according to the criteria and process set out in this **Section 2.080**.

2.086 FINAL ACCEPTANCE

“Final Acceptance” shall be considered to occur when the Custom Software Deliverable to be delivered has been approved by the State and has been operating in production without any material deficiency for fourteen (14) consecutive days. If the State elects to defer putting a Custom Software Deliverable into live production for its own reasons, not based on concerns about outstanding material deficiencies in the Deliverable, the State shall nevertheless grant Final Acceptance of the Project.

2.090 FINANCIAL

2.091 PRICING

- (a) Fixed Prices for Services/Deliverables. Each Statement of Work/PO issued under this Contract shall specify (or indicate by reference to the appropriate Contract Exhibit) the firm, fixed prices for all Services/Deliverables, and the associated payment milestones and payment amounts. To the extent the parties agree that certain specific Services will be provided on a time and materials basis, such Services shall be provided at the Amendment Labor Rates ([Article 1, Attachment A](#)). The State may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.
- (b) Adjustments for Reductions in Scope of Services/Deliverables. If the scope of the Services/Deliverables under any Statement of Work issued under this Contract is subsequently reduced by the State, the parties shall negotiate an equitable reduction in Contractor’s charges under such Statement of Work commensurate with the reduction in scope, using the rates in [Article 1, Attachment A](#) unless specifically identified in an applicable Statement of Work.
- (c) Services/Deliverables Covered. For all Services/Deliverables to be provided by Contractor (and its Subcontractors, if any) under this Contract, the State shall not be obligated to pay any amounts in addition to the charges specified in this Contract.
- (d) Labor Rates. All time and material charges will be at the rates specified in [Article 1, Attachment A](#).

2.092 INVOICING AND PAYMENT PROCEDURES AND TERMS

(a) Invoicing and Payment – In General

- (i) Each Statement of Work issued under this Contract shall list (or indicate by reference to the appropriate Contract Exhibit) the prices for all Services/Deliverables, equipment and commodities to be provided, and the associated payment milestones and payment amounts.
- (ii) Each Contractor invoice will show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State’s accounting and charge-back requirements. The charges for Services billed on a time and materials basis shall be determined based on the actual number of hours of Services performed, at the applicable Labor Rates specified in [Article 1, Attachment A](#). 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 – REVISED

2.095 ELECTRONIC PAYMENT AVAILABILITY

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

2.100 CONTRACT MANAGEMENT

2.101 CONTRACT MANAGEMENT RESPONSIBILITY

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

2.102 PROBLEM AND CONTRACT MANAGEMENT PROCEDURES

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

2.103 REPORTS AND MEETINGS

- (a) Reports. Within thirty (30) days after the Effective Date, the parties shall determine an appropriate set of periodic reports to be issued by Contractor to the State. Such reports may include:
 - (i) separately address Contractor’s performance in each area of the Services;
 - (ii) for each area of the Services, assess the degree to which Contractor has attained or failed to attain the pertinent objectives in that area, including on-time completion and delivery of Deliverables;
 - (iii) explain the reasons for any failure to achieve on-time completion and delivery of Deliverables and include a plan for corrective action where appropriate;
 - (iv) describe any circumstances that Contractor anticipates will impair or prevent on-time completion and delivery of Deliverables in upcoming reporting periods;
 - (v) include plans for corrective action or risk mitigation where appropriate and describe the status of ongoing problem resolution efforts;
 - (vi) provide reports setting forth a comparison of actual hours spent by Contractor (including its augmented personnel and Subcontractors) in performing the Project versus hours budgeted by Contractor.
 - (vii) set forth a record of the material personnel changes that pertain to the Services and describe planned changes during the upcoming month that may affect the Services.
 - (viii) include such documentation and other information may be mutually agreed to verify compliance with, and meeting the objectives of, this Contract.
 - (ix) set forth an updated schedule that provides information on the status of upcoming Deliverables, expected dates of delivery (or redelivery) of such Deliverables and estimates on timing for completion of the Project.



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

2.104 SYSTEM CHANGES

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

2.105 RESERVED

2.106 CHANGE REQUESTS

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

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

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

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

(a) Change Requests

- i. State Requests. If the State should require Contractor to perform New Work, Additional Services or make changes to the Services that would affect the Contract completion schedule or the amount of compensation due Contractor (a "Change"), the State shall submit a written request for Contractor to furnish a proposal for carrying out the requested Change (a "Change Request").
- ii. Contractor Recommendations. Contractor shall be entitled to propose a Change to the State, on its own initiative, should it be of the opinion that this would benefit the Contract.
- iii. Upon receipt of a Change Request or on its own initiative, Contractor shall examine the implications of the requested Change on the technical specifications, Contract schedule and



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

- iv. By giving Contractor written notice within a reasonable time, the State shall be entitled to accept a Contractor proposal for Change, to reject it or to reach another agreement with Contractor. Should the parties agree on carrying out a Change, a written Contract Change Notice shall be prepared and issued under this Contract, describing the Change and its effects on the Services and any affected components of this Contract (a "Contract Change Notice").
- v. No proposed Change shall be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the Department of Management and Budget, Purchasing Operations.
- vi. If the State requests or directs Contractor to perform any activities that Contractor believes constitute a Change, Contractor must notify the State that it believes the requested activities are a Change prior to commencing the performance of the requested activities. If Contractor fails to so notify the State prior to commencing performance of the requested activities, such activities shall be considered to be performed gratuitously by Contractor, and Contractor shall not have any right thereafter to assert any claim for additional compensation or time for the performance of such activities. If Contractor commences performance of gratuitous services outside the scope of this Contract and subsequently elects to stop performing such out-of-scope services, Contractor must, at the request of the State, back out or reverse any changes resulting from such performance that would adversely affect the Contract.

2.107 MANAGEMENT TOOLS

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

2.110 RECORDS AND INSPECTIONS

2.111 RECORDS AND INSPECTIONS

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

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

2.140 RESERVED

2.150 CONFIDENTIALITY

2.151 FREEDOM OF INFORMATION

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

2.152 CONFIDENTIALITY

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

2.153 PROTECTION OF CONFIDENTIAL INFORMATION

The State and Contractor will each use at least the same degree of care to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication or dissemination of its own confidential information of like character, but in no event less



than reasonable care. Neither Contractor nor the State will (i) make any use of the Confidential Information of the other except as contemplated by this Contract, (ii) acquire any right in or assert any lien against the Confidential Information of the other, or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information to the other party. Each party will limit disclosure of the other party's Confidential Information to employees and Subcontractors who must have access in order to fulfill the purposes of this Contract. Disclosure to, and use by, a Subcontractor is permissible where (A) use of a Subcontractor is authorized under this Contract, (B) such disclosure is necessary or otherwise naturally occurs in connection with work that is within such Subcontractor's scope of responsibility, and (C) Contractor obligates the Subcontractor in a written Contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor and of any Subcontractor having access or continued access to the State's Confidential Information may be required to execute an acknowledgment that the employee has been advised of Contractor's and the Subcontractor's obligations under this Section and of the employee's obligation to Contractor or Subcontractor, as the case may be, to protect such Confidential Information from unauthorized use or disclosure.

2.154 EXCLUSIONS

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

2.155 NO IMPLIED RIGHTS

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

2.156 REMEDIES

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

2.157 SECURITY BREACH NOTIFICATION

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

2.158 SURVIVAL

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

2.159 DESTRUCTION OF CONFIDENTIAL INFORMATION

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

2.160 PROPRIETARY RIGHTS

2.161 OWNERSHIP

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

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

2.162 RESERVED - SOURCE CODE ESCROW

2.163 RIGHTS IN DATA

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

2.164 OWNERSHIP OF MATERIALS

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

2.165 STANDARD SOFTWARE

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

2.166 PRE-EXISTING MATERIALS FOR CUSTOM SOFTWARE DELIVERABLES

Neither Contractor nor any of its Subcontractors shall incorporate any preexisting materials (including Standard Software) into Custom Software Deliverables or use any pre-existing materials to produce Custom Software Deliverables if such pre-existing materials will be needed by the State in order to use the Custom Software Deliverables unless (i) such pre-existing materials and their owners are identified to the State in writing and (ii) such pre-existing materials are either readily commercially available products for which Contractor or its Subcontractor, as the case may be, has obtained a license (in form and substance approved by the State) in the name of the State, or are materials that Contractor or its Subcontractor, as the case may be, has the right to license to the State and has licensed to the State on terms and conditions approved by the State prior to using such pre-existing materials to perform the Services.

2.167 GENERAL SKILLS

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

2.170 WARRANTIES AND REPRESENTATIONS

2.171 WARRANTIES AND REPRESENTATIONS

The Contractor represents and warrants:

- (a) It is capable in all respects of fulfilling and shall fulfill all of its obligations under this Contract. The performance of all obligations under this Contract shall be provided in a timely, professional, and workman-like manner and shall meet the performance and operational standards required under this Contract.
- (b) The Contract Appendices, Attachments and Exhibits identify the equipment and software and services necessary for the Deliverable(s) to perform and Services to operate in compliance with the Contract's requirements and other standards of performance.
- (c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by Contractor under this Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by Contractor to the State under this Contract, nor their use by the State, will infringe the patent, copyright, trade secret, or other proprietary rights of any third party.
- (d) If, under this Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to such items in this Contract, Contractor shall assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.
- (e) The contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into this Contract, on behalf of Contractor.
- (f) It is qualified and registered to transact business in all locations where required.
- (g) Neither the Contractor nor any Affiliates, nor any employee of either, has, shall have, or shall acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under this Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor shall notify the State within two (2) days of any such interest that may be incompatible with the interests of the State.
- (h) Neither Contractor nor any Affiliates, nor any employee of either has accepted or shall accept anything of value based on an understanding that the actions of the Contractor or Affiliates or employee on behalf of the State would be influenced. Contractor shall not attempt to influence any State employee by the direct or indirect offer of anything of value.



- (i) Neither Contractor nor any Affiliates, nor any employee of either has paid or agreed to pay any person, other than bona fide employees and consultants working solely for Contractor or such Affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.
- (j) The prices proposed by Contractor were arrived at independently, without consultation, communication, or agreement with any other bidder for the purpose of restricting competition; the prices quoted were not knowingly disclosed by Contractor to any other bidder; and no attempt was made by Contractor to induce any other person to submit or not submit a proposal for the purpose of restricting competition.
- (k) All financial statements, reports, and other information furnished by Contractor to the State as part of its response to the RFP or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Contractor as of the respective dates, or for the respective periods, covered by such financial statements, reports, other information. Since the respective dates or periods covered by such financial statements, reports, or other information, there have been no material adverse change in the business, properties, financial condition, or results of operations of Contractor.
- (l) All written information furnished to the State by or behalf of Contractor in connection with this Contract, including its bid, is true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make such information not misleading.
- (m) 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.
 - All configurations are covered by the manufacturer's standard warranty.
 - Warranty commences on the date enhancements are accepted by the State.
 - All applicable third party warranties for deliverables are assigned to the State.
 - Any upgrades of the software made during the warranty period are supplied at no additional cost.

2.172 **SOFTWARE WARRANTIES**

(a) **Performance Warranty**

The Contractor represents and warrants that Deliverables, after Final Acceptance, will perform and operate in compliance with the requirements and other standards of performance contained in this Contract (including all descriptions, specifications and drawings made a part of the Contract) for a period of **ninety (90)** days. In the event of a breach of this warranty, Contractor will promptly correct the affected Deliverable(s) at no charge to the State.

(b) **No Surreptitious Code Warranty**

The Contractor represents and warrants that no copy of licensed Software provided to the State contains or will contain any Self-Help Code or any Unauthorized Code as defined below. This warranty is referred to in this Contract as the "No Surreptitious Code Warranty."

As used in this Contract, "Self-Help Code" means any back door, time bomb, drop dead device, or other software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than the licensee of the software. Self-Help Code does not include Software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee's computer system(s) (e.g. remote access via modem) for purposes of maintenance or technical support.

As used in this Contract, "Unauthorized Code" means any virus, Trojan horse, spyware, worm or other Software routines or components designed to permit unauthorized access to disable, erase, or otherwise harm software, equipment, or data; or to perform any other such actions. The term Unauthorized Code does not include Self-Help Code. Unauthorized Code does not include Software routines in a computer program, if any, designed to permit an owner of the computer program (or other



person acting by authority of the owner) to obtain access to a licensee's computer system(s) (e.g. remote access via modem) for purposes of maintenance or technical support.

In addition, Contractor will use up-to-date commercial virus detection software to detect and remove any viruses from any software prior to delivering it to the State.

(c) Calendar Warranty

The Contractor represents and warrants that all software for which the Contractor either sells or licenses to the State of Michigan and used by the State prior to, during or after the calendar year 2000, includes or shall include, at no added cost to the State, design and performance so the State shall not experience software abnormality and/or the generation of incorrect results from the software, due to date oriented processing, in the operation of the business of the State of Michigan.

The software design, to insure calendar year rollover compatibility, shall include, but is not limited to: data structures (databases, data files, etc.) that provide 4-digit date century; stored data that contain date century recognition, including, but not limited to, data stored in databases and hardware device internal system dates; calculations and program logic (e.g., sort algorithms, calendar generation, event recognition, and all processing actions that use or produce date values) that accommodates same century and multi-century formulas and date values; interfaces that supply data to and receive data from other systems or organizations that prevent non-compliant dates and data from entering any State system; user interfaces (i.e., screens, reports, etc.) that accurately show 4 digit years; and assurance that the year 2000 shall be correctly treated as a leap year within all calculation and calendar logic.

(d) Third-party Software Warranty

The Contractor represents and warrants that it will disclose the use or incorporation of any third-party software into the Deliverables. At the time of Delivery, the Contractor shall provide in writing the name and use of any Third-party Software, including information regarding the Contractor's authorization to include and utilize such software. The notice shall include a copy of any ownership agreement or license that authorizes the Contractor to use the Third-party Software.

2.173 EQUIPMENT WARRANTY

To the extent Contractor is responsible under this Contract for maintaining equipment/system(s), Contractor represents and warrants that it will maintain such equipment/system(s) in good operating condition and will undertake all repairs and preventive maintenance in accordance with the applicable manufacturer's recommendations for the period specified in this Contract.

The Contractor represents and warrants that the equipment/system(s) shall be in good operating condition and shall operate and perform to the requirements and other standards of performance contained in this Contract, when installed, at the time of Final Acceptance by the State, and for a period of one (1) year commencing upon the first day following Final Acceptance.

Within two (2) business days of notification from the State, the Contractor shall adjust, repair or replace all equipment that is defective or not performing in compliance with the Contract. The Contractor shall assume all costs for replacing parts or units and their installation including transportation and delivery fees, if any.

The Contractor shall provide a toll-free telephone number to allow the State to report equipment failures and problems to be remedied by the Contractor.

The Contractor agrees that all warranty service it provides under this Contract shall be performed by original equipment manufacturer (OEM) trained, certified and authorized technicians.

The Contractor shall act as the sole point of contact for warranty service. The Contractor warrants that it shall pass through to the State any and all warranties obtained or available from the original equipment manufacturer, including any replacement, upgraded, or additional equipment warranties.

2.174 PHYSICAL MEDIA WARRANTY

- (a) Contractor represents and warrants that each licensed copy of the Software provided by the Contractor is free from physical defects in the media that tangibly embodies the copy. This warranty does not apply to defects discovered more than thirty (30) days after that date of Final Acceptance of the Software by the State. This warranty does not apply to defects arising from acts of Excusable Failure. If the Contractor breaches this warranty, then the State shall be entitled to replacement of the non-compliant copy by Contractor, at Contractor’s expense (including shipping and handling).

2.175 STANDARD WARRANTIES

- (a) Warranty of Merchantability - Deliverables shall be merchantable. All Deliverables shall be of good quality within the description given by the State, shall be fit for their ordinary purpose, shall be adequately contained and packaged within the description given by the State, shall conform to the agreed upon specifications, and shall conform to the affirmations of fact made by the Contractor on the container or label.
- (b) Warranty of fitness for a particular purpose - When Contractor has reason to know or knows any particular purpose for which the Deliverables are required, and when the State is relying on the Contractor’s skill or judgment to select or furnish suitable Deliverables, the Contractor 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 Purchasing Operations certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor shall provide evidence that the State and its agents, officers and employees are listed as additional insureds under each commercial general liability and commercial automobile liability policy. In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

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



Contractor at least thirty (30) days written notice, the State may pay such premium or procure similar insurance coverage from another company or companies; and at the State's election, the State may deduct the entire cost (or part thereof) from any payment due Contractor, or Contractor shall pay the entire cost (or any part thereof) upon demand by the State.

2.190 INDEMNIFICATION

2.191 INDEMNIFICATION

(a) General Indemnification -

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

(b) Code Indemnification -

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

(c) Employee Indemnification -

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

(d) Patent/Copyright Infringement Indemnification -

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

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

Notwithstanding the foregoing, the Contractor shall have no obligation to indemnify or defend the State for, or to pay any costs, damages or attorneys' fees related to, any claim based upon (i) equipment developed based on written specifications of the State; or (ii) use of the equipment in a configuration other than implemented or approved in writing by the Contractor, including, but not limited to, any modification of the equipment by the State; 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.
- (c) **Software** - The Contractor shall reasonably assist the State in the acquisition of any Contractor software required to perform the Services/use the Deliverables under this Contract. This shall include any documentation being used by the Contractor to perform the Services under this Contract. If the State transfers any software licenses to the Contractor, those licenses shall, upon expiration of the Contract, transfer back to the State at their current revision level. Upon notification by the State, Contractor may be required to freeze all non-critical changes to Deliverables/Services.



- (d) **Payment** - If the transition results from a termination for any reason, reimbursement shall be governed by the termination provisions of this Contract. If the transition results from expiration, the Contractor will be reimbursed for all reasonable transition costs (i.e. costs incurred within the agreed period after contract expiration that result from transition operations) at the rates specified by [Article 1, Attachment A](#). 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 Purchasing Operations.
 - (2) Contractor shall also notify the Purchasing Operations within thirty (30) days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.
 - (3) Contractor shall also notify Purchasing Operations within thirty (30) days whenever changes to company affiliations occur.

2.272 GOVERNING LAW

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

2.273 COMPLIANCE WITH LAWS

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

2.274 JURISDICTION

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

2.280 ENVIRONMENTAL PROVISION

2.281 ENVIRONMENTAL PROVISION

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



- (a) The Contractor shall use, handle, store, dispose of, process, transport and transfer any material considered a Hazardous Material in accordance with all federal, State and local laws. The State shall provide a safe and suitable environment for performance of Contractor's Work. Prior to the commencement of Work, the State shall advise Contractor of the presence at the work site of any Hazardous Material to the extent that the State is aware of such Hazardous Material. If the Contractor encounters material reasonably believed to be a Hazardous Material and which may present a substantial danger, the Contractor shall immediately stop all affected Work, give written notice to the State of the conditions encountered, and take appropriate health and safety precautions.
- (b) Upon receipt of a written notice, the State will investigate the conditions. If (a) the material is a Hazardous Material that may present a substantial danger, and (b) the Hazardous Material was not brought to the site by the Contractor, or does not result in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Materials, the State shall order a suspension of Work in writing. The State shall proceed to have the Hazardous Material removed or rendered harmless. In the alternative, the State shall terminate the affected Work for the State's convenience.
- (c) Once the Hazardous Material has been removed or rendered harmless by the State, the affected Work shall be resumed as directed in writing by the State. Any determination by the Michigan Department of Community Health and/or the Michigan Department of Environmental Quality (whichever is applicable) that the Hazardous Material has either been removed or rendered harmless shall be binding upon the State and Contractor for the purposes of resuming the Work. If any such incident with Hazardous Material results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in **Section 2.076** for a time as mutually agreed by the parties.
- (d) If the Hazardous Material was brought to the site by the Contractor, or results in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor shall bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material in accordance with Applicable Laws to the condition approved by applicable regulatory agency(ies). If the Contractor fails to take appropriate action pursuant to Applicable Laws and consistent with the State requirements, then the State may take appropriate action.

2.290 GENERAL

2.291 AMENDMENTS

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

2.292 ASSIGNMENT

- (a) Neither party shall have the right to assign the Contract, or to assign or delegate any of its duties or obligations under the Contract, to any other party (whether by operation of law or otherwise), without the prior written consent of the other party; provided, however, that the State may assign the Contract to any other State agency, department, division or department without the prior consent of Contractor and Contractor may assign the Contract to an affiliate so long as such affiliate is adequately capitalized and can provide adequate assurances that such affiliate can perform the Contract. Any purported assignment in violation of this Section shall be null and void. It is the policy of the State of Michigan to withhold consent from proposed assignments, subcontracts, or novations when such transfer of responsibility would operate to decrease the State's likelihood of receiving performance on the Contract or the State's ability to recover damages.
- (b) Contractor may not, without the prior written approval of the State, assign its right to receive payments due under the Contract. In the event of any such permitted assignment, Contractor shall not be relieved of its responsibility to perform any duty imposed upon it herein, and the requirement under the Contract that all payments shall be made to one entity shall continue.

2.293 ENTIRE CONTRACT; ORDER OF PRECEDENCE

- (a) The Contract, including any Statements of Work and Exhibits, to the extent not contrary to the Contract, each of which is incorporated for all purposes, constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior agreements, whether written or oral, with respect to such subject matter and as additional terms and conditions on the purchase order shall apply as limited by **Section 2.061**.
- (b) In the event of any inconsistency between the terms of the Contract and a Statement of Work, the terms of the Statement of Work will take precedence (as to that Statement of Work only); provided, however, that a Statement of Work may not modify or amend the terms of **Sections 2.110 through 2.220** of the Contract, which may be modified or amended only by a formal Contract amendment.

2.294 HEADINGS

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

2.295 RELATIONSHIP OF THE PARTIES (INDEPENDENT CONTRACTOR RELATIONSHIP)

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

2.296 NOTICES

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

Steve Motz - Buyer
 Purchasing Operations
 Department of Management and Budget
 Mason Bldg, 2nd Floor
 PO Box 30026
 Lansing, MI 48909
 Email: motzs@michigan.gov
 Phone: 517-241-3215

with a copy to:

Cindy Turben – Contract Compliance Inspector
 Department of Information Technology
 Constitution Hall, Atrium South Tower
 525 W. Allegan St
 Lansing, Mi 48933
 Email: TurbenC@michigan.gov
 Phone: 517-335-6069

Contractor(s):
 Robbins-Gioia, LLC
 11 Canal Center Plaze, Suite 200
 Alexandria, Virginia 22314



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

(b) **Binding Commitments**

Representatives of Contractor identified in [Article 1, Attachment B](#) shall have the authority to make binding commitments on Contractor's behalf within the bounds set forth in such table. Contractor may change such representatives from time to time upon written notice.

2.297 MEDIA RELEASES AND CONTRACT DISTRIBUTION

(a) **Media Releases**

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

(b) **Contract Distribution**

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

2.298 REFORMATION AND SEVERABILITY

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

2.299 CONSENTS AND APPROVALS

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

2.300 NO WAIVER OF DEFAULT

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

2.301 SURVIVAL

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

2.302 COVENANT OF GOOD FAITH

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

2.303 PERMITS

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

**2.304 WEBSITE INCORPORATION**

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

2.305 TAXES

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

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

2.306 PREVAILING WAGE

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

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

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

2.307 CALL CENTER DISCLOSURE

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

2.308 FUTURE BIDDING PRECLUSION

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

2.310 RESERVED**2.320 EXTENDED PURCHASING**

2.321 MIDEAL

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

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

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

2.322 STATE EMPLOYEE PURCHASES - RESERVED

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/epl/servlet/EPLSearchMain/1>

Exhibit A

Approved Subcontractors

None at this time

Exhibit B
Approved Hardware

To be provided by the State:

PC Workstations

Printer

Access to Copiers and Fax Machine

Exhibit C
Approved Software

To be provided by the State:
CAT II Software

RESERVED - Exhibit D
Binding Commitments