

**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**

May 2, 2011

**CHANGE NOTICE NO. 3
 TO
 CONTRACT NO. 071B7200237
 between
 THE STATE OF MICHIGAN
 and**

NAME & ADDRESS OF VENDOR ACS Unclaimed Property Clearinghouse 260 Franklin Street, 11th Floor Boston, MA 02110	TELEPHONE (617) 722-9696 Lynden Lyman
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-1916 Jim Wilson
Contract Compliance Inspector: Gonzalo Llano Non-State Initiated Unclaimed Property Audits – Department of Treasury	
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>	

NATURE OF CHANGE(S):

**Effective immediately, this Contract is hereby EXTENDED through March 31, 2012.
 All other terms, conditions, specifications, and pricing remain the same.**

AUTHORITY/REASON:

Per agency request (PRF dated 2/7/11), vendor agreement and DTMB, Purchasing Operations' approval.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$12,000,000.00

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

March 10, 2010

CHANGE NOTICE NO. 2
TO
CONTRACT NO. 071B7200237
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR ACS Unclaimed Property Clearinghouse 260 Franklin Street, 11th Floor Boston, MA 02110	TELEPHONE (617) 722-9696 Lynden Lyman
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-1916 Jim Wilson
Contract Compliance Inspector: Gonzalo Llano Non-State Initiated Unclaimed Property Audits – Department of Treasury	
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>	

NATURE OF CHANGE(S):

Effective immediately, this Contract is hereby **EXTENDED** through March 31, 2011.

Also effective immediately, the following attached language is hereby incorporated into this Contract (see attachments).

All other terms, conditions, specifications, and pricing remain the same.

AUTHORITY/REASON:

Per agency request (PRF dated 2/17/10), vendor agreement (email dated 2/12/10) and DMB, Purchasing Operations' approval.

CURRENT AUTHORIZED SPEND LIMIT REMAINS: \$12,000,000.00

Contract Change # 2 - 071B7200237
ACS Unclaimed Property Clearinghouse
February 12, 2010

Section 1.104.
Current task

5. The examination/audit work to be performed will include the following:
- A. **General Ledger and/or Securities Audit** means the examination and audit of the financial records of a holder, wherein the Contractor takes physical custody of the records, either on site or off-site, and performs a physical inspection/examination/audit of such records to determine whether the holder is in compliance with reporting and remitting all unclaimed property to the State. After the audit/examination process is completed, the Contractor prepares the unclaimed property report in proper format (see section 1.104.3), reviews it for accuracy and compliance, and forwards the report and remittance matching the report to the UPD.
 - B. **Contractor-Assisted Self-Audit means** the Contractor assists and/or oversees the process whereby a holder performs a general ledger and/or securities self-audit. The Contractor does not generally take physical custody of the financial records of the holder and does not perform an examination or audit of those records. The Contractor informs the holder of the requirements of the unclaimed property laws, details of the reporting requirements, provides the necessary information to the holder or holder's agent regarding unclaimed property and the reporting process and provides other necessary guidance and assistance to the holder so that the holder can accurately perform a self-audit. Upon the holder's completion of the self-audit, the Contractor prepares the unclaimed property report and forwards the report and remittance to the UPD after it has been determined by the Contractor to be complete, in proper format (see section 1.104.3) and in compliance with the Act.

The Contractor will only be compensated for audit work performed on the initial holder engagement. The Contractor will not be compensated for any work that it may perform for the holder in subsequent years. Any special circumstances in which subsequent work should be considered for compensation by the State will require prior written approval by the Contract Compliance Inspector.

Updated task and contractor response:

5. The examination/audit work to be performed will include the following:
- A. **General Ledger Audit** means a State-initiated examination of the general ledger financial records of a holder, wherein the Contractor takes physical custody of the records, either on site or off-site, and performs a physical inspection/examination/audit of such records to determine whether the holder is in compliance with reporting and remitting all unclaimed property to the State. After the audit/examination process is completed, the Contractor prepares the unclaimed property report in proper format (see section 1.104.3), reviews it for accuracy and compliance, and forwards the report and remittance matching the report to the UPD.

Contractor Response to Task:

ACS General Ledger audits shall mean that the contractor shall undertake to identify and collect from persons, firms and entities (hereinafter called "holders"), their agents, and other third party record keepers, which are holding or are in possession of unclaimed general ledger property and/or the associated records necessary to determine unclaimed property subject to report and delivery under the State's unclaimed property laws. Contractor shall not proceed with General Ledger property examinations without having first received written approval from the Contract Compliance Inspector.

In addition, in order to support state unclaimed property program compliance efforts, ACS has developed the Advanced Compliance Enforcement Service (ACES) program. A key component of the ACES program is performing a state database compliance analysis.

Generally, the ACES analysis includes reviewing the reporting histories of all public and privately held companies with revenue greater than \$100 million that are either located or incorporated in the state, the top employers and top insurance companies by premiums written. The ACES program analyzes the current reporting practices of the population of companies to ensure that all appropriate categories and amounts of property are being reported.

Criteria used to determine under-reporting may include identifying: gaps in reports years, no or minimal reporting of specific categories of property and non-reporting of expected property types. Upon completion of the analysis, ACS will provide the state with a report identifying potential non- and under-reporters of unclaimed property.

The entire process includes:

§ Defining a set of companies that would likely give rise to substantial amounts of abandoned property for a participating state

§ Upon written approval from the Contract Compliance Inspector, extracting data from a participating state's unclaimed property record management system (in most cases Wagers)

§ Loading data into the compliance analysis system

§ Performing automated and manual analysis processes

§ Reporting apparent compliance deficiencies

Upon written approval from the Contract Compliance Inspector, ACS will notify specified holders in the deficiency report that a review process has concluded that the subject holder may have failed to report all property subject to reporting and, and that ACS will be available to facilitate the reporting as the state's authorized representative.

In support of the ACES initiative, ACS upon request of the state will facilitate the data extraction process, will perform a compliance analysis, provide detailed analysis reports, recommend holders for compliance reviews, facilitate a mail merge for under and non-reporters communications (and follow up mailings as needed) and conduct compliance reviews on a mutually agreed upon set of holders. The state will be required to provide access or provide data necessary in order to facilitate the compliance review process, will prepare periodic mailings to a mutually agreed upon set of holders deemed to be under or non-reporters of unclaimed property and receive periodic communications and inquiries from holders regarding the compliance process.

B. Securities Audit means the examination of the Securities related financial records of a holder (normally maintained by a transfer agent) wherein the Contractor takes physical custody of the records, either on site or off-site, and performs a physical inspection/examination/audit of such records to determine whether the holder is compliance with reporting and remitting all unclaimed property to the State. After the audit/examination process is completed, the Contractor prepares the unclaimed property report in proper format (see section 1.104.3), reviews it for accuracy and compliance, and forwards the report and remittance matching the report to the UPD.

Contractor Response to Task:

ACS Securities Audits shall mean that the Contractor shall undertake to identify and collect from persons, firms and entities (hereinafter called "holders") and their agents which are holding or are in possession of unclaimed securities property and/or the associated records necessary to determine unclaimed property subject to report and delivery under the State's unclaimed property laws. In order to provide identification and collection of unclaimed securities, the Contractor shall:

- a. Independently analyze, review, and test unedited records of unclaimed securities property obtained from holders and transfer agents to ensure accuracy and completeness of reports.
- b. Complete a review of holders' unclaimed property recordkeeping systems and processes.
- c. Collect property deemed reportable under the State's unclaimed property laws from holders and transfer agents.

Contractor shall undertake securities audits without the State's prior consent or authorization to proceed. First-time reporters (e.g. companies with no prior reporting history) shall be compensated as provided in Contractor's pricing schedule as set forth in Article 1, Attachment A, Section B.1. ACS shall not invoice the State for any issues that had previously been reported by the holder except when there has been material non-compliance. Examples of material non-compliance include the holder's failure to report for three consecutive reporting cycles or when the holder under-reports unclaimed property subject to reporting. In cases of material non-compliance or where the holder has a prior reporting history, but has not reported a particular securities issue, Contractor shall be compensated at a reduced fee as provided in Contractor's pricing schedule set forth in Article 1, Attachment A, Section B.2. ACS shall advise holders of their future ongoing obligation to report directly to the state and will only be compensated one time by the State for a particular securities issue. ACS shall not invoice the state for issues where it has been compensated directly by a holder for unclaimed property reporting services relating to those issues.

--

C. Contractor-Assisted Self-Audit means the Contractor assists and/or oversees the process whereby a holder performs a general ledger and/or securities self-audit. The Contractor does not generally take physical custody of the financial records of the holder and does not perform an examination or audit of those records. The contractor informs the holder of the requirements of the unclaimed property laws, details of the reporting requirements, provides the necessary information to the holder or holder's agent regarding unclaimed property and the reporting process and provides other necessary guidance and assistance to the holder so that the holder can accurately perform a self-audit. Upon the holder's completion of the self-audit, the Contractor prepares the unclaimed property report and forwards the report and remittance to the UPD after it has been determined by the Contractor to be complete, in proper format (see section 1.104.3) and in compliance with the Act.

Contractor Response to Task:

ACS does not perform work defined by the IFB as a Contractor-Assisted Audit. In the event, however, that ACS does perform work qualifying as a Contractor-Assisted Audit, ACS will disclose such fact to the State and discuss the nature and scope of the work performed. These audits shall only apply to the reporting of general ledger related property. Contractor shall not proceed with Contractor-Assisted Self Audits without having first received the State's approval to do so, and only after an agreement between ACS and the State on the contingency fee rate (not to exceed the Securities Audit or General Ledger Audit rates), which will be determined on a case-by-case basis.

Article 1, Attachment A

Pricing

Pricing for Unclaimed Property Audits

	Contingency Fee		Quantity	Total
A. General Ledger Audit				
1. Value of Assets Remitted to State During Contract Period				
a. \$0-\$10,000,000	<u>12%</u>	x	\$ 10,000,000.00	<u>\$1,200,000.00</u>
b. \$10,000,000.01 to \$30,000,000	<u>12%</u>	x	\$ 30,000,000.00	<u>\$3,600,000.00</u>
c. \$30,000,000.01 to \$50,000,000	<u>12%</u>	x	\$ 50,000,000.00	<u>\$6,000,000.00</u>
d. \$50,000,000.01 or greater	<u>12%</u>	x	\$ 60,000,000.00	<u>\$7,200,000.00</u>
B. Securities Audit –				
1. Value of Assets Remitted to State During Contract Period (first time reporters with no prior reporting history)				
a. \$0-\$10,000,000	<u>12%</u>	x	\$ 10,000,000.00	<u>\$1,200,000.00</u>
b. \$10,000,000.01 to \$30,000,000	<u>12%</u>	x	\$ 30,000,000.00	<u>\$3,600,000.00</u>
c. \$30,000,000.01 to \$50,000,000	<u>12%</u>	x	\$ 50,000,000.00	<u>\$6,000,000.00</u>
d. \$50,000,000.01 or greater	<u>12%</u>	x	\$ 60,000,000.00	<u>\$7,200,000.00</u>
2. Value of Assets Remitted to State During Contract Period (Prior Reporting History and (non-compliant or a new issue))				
a. \$0-\$10,000,000	<u>6%</u>	x	\$ 10,000,000.00	<u>\$600,000.00</u>
b. \$10,000,000.01 to \$30,000,000	<u>6%</u>	x	\$ 30,000,000.00	<u>\$1,800,000.00</u>
c. \$30,000,000.01 to \$50,000,000	<u>6%</u>	x	\$ 50,000,000.00	<u>\$3,000,000.00</u>
d. \$50,000,000.01 or greater	<u>6%</u>	x	\$ 60,000,000.00	<u>\$3,600,000.00</u>

The State shall receive a discount of 1 percent of the contingency fees invoiced for all payments made within 20 calendar days from the receipt of the invoice. I.e. The contingency fee will be 11% when paid within 20 days from the State's receipt of the invoice. 12% after 20 days. For securities audits conducted at the reduced fee of 6%, The State shall receive a discount of 1/2 percent of the contingency fees invoiced for all payments made within 20 calendar days from the receipt of the invoice. I.e. The contingency fee will be 5.5% when paid within 20 days from the State's receipt of the invoice. 6% after 20 days.

Contract Renewal

Section 2.032: Contract Term - indicates the contract is for a period of April 1, 2007 through March 31, 2010.

Section 2.033: Renewal(s) - this contract may be renewed in writing by mutual agreement of the parties not less than 30 days before its expiration. The Contract may be renewed for up to two (2) additional one (1) year periods.

Please indicate your agreement to a 2-year renewal.

Contractor Response:

ACS would like to review with the State the renewal of this agreement for up to two (2) additional one (1) year periods no less than 30 days before the current expiration date of March 31, 2010.
--

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

July 5, 2007

CHANGE NOTICE NO. 1
TO
CONTRACT NO. 071B7200237
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR ACS Unclaimed Property Clearinghouse 260 Franklin Street, 11th Floor Boston, MA 02110	TELEPHONE (617) 722-9696 Lynden Lyman
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-1916 Jim Wilson
Contract Compliance Inspector: Gonzalo Llano Non-State Initiated Unclaimed Property Audits – Department of Treasury	
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>	

NATURE OF CHANGE(S):

Effective immediately, the following language is hereby incorporated into this Contract:

“The State shall receive a discount of 8% (8 percent) of the collection fees invoiced or approximately 11% (11 percent) of the property collected for all payments made within 20 days from the receipt of the invoice.”

All other terms, conditions, specifications, and pricing remain the same.

AUTHORITY/REASON:

Per agency request and DMB, Purchasing Operations.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$12,000,000.00

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

April 9, 2007

**NOTICE
 TO
 CONTRACT NO. 071B7200237
 between
 THE STATE OF MICHIGAN
 and**

NAME & ADDRESS OF VENDOR ACS Unclaimed Property Clearinghouse 260 Franklin Street, 11th Floor Boston, MA 02110	TELEPHONE (617) 722-9696 Lynden Lyman
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-1916 Jim Wilson
Contract Compliance Inspector: Gonzalo Llano Non-State Initiated Unclaimed Property Audits – Department of Treasury	
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>	

The terms and conditions of this Contract are those of ITB #071I6200376, this Contract Agreement and the vendor's quote. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.

Estimated Contract Value: **\$12,000,000.00**

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

CONTRACT NO. 071B7200237
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR ACS Unclaimed Property Clearinghouse 260 Franklin Street, 11th Floor Boston, MA 02110	TELEPHONE (617) 722-9696 Lynden Lyman VENDOR NUMBER/MAIL CODE BUYER/CA (517) 241-1916 Jim Wilson
Contract Compliance Inspector: Gonzalo Llano Non-State Initiated Unclaimed Property Audits – Department of Treasury	
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: <p>The terms and conditions of this Contract are those of ITB #071I6200376, this Contract Agreement and the vendor's quote. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.</p> <p>Estimated Contract Value: \$12,000,000.00</p>	

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the ITB No. 071I6200376. Orders for delivery will be issued directly by the Department of Treasury through the issuance of a Purchase Order Form.

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

<p>FOR THE VENDOR:</p> <p style="text-align: center;">ACS Unclaimed Property Clearinghouse</p> <hr/> <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>	<p>FOR THE STATE:</p> <hr/> <p style="text-align: center;">Signature</p> <p style="text-align: center;">Elise A. Lancaster</p> <hr/> <p style="text-align: center;">Name</p> <p style="text-align: center;">Director, Purchasing Operations</p> <hr/> <p style="text-align: center;">Title</p> <hr/> <p style="text-align: center;">Date</p>
---	---



Article 1 – Statement of Work (SOW)

1.0 Project Identification

1.001 PROJECT REQUEST

This Contract is for unclaimed property examinations in accordance with the Michigan Uniform Unclaimed Property Act (Act) and generally accepted auditing standards.

1.002 BACKGROUND

The Michigan Department of Treasury, Unclaimed Property Division (UPD) requires the services of a Contractor or Contractors to conduct unclaimed property examinations. The entities to be audited will be companies or governmental entities that are located anywhere in the United States.

The State of Michigan (State) issued an RFP in 2005 to conduct State-initiated unclaimed property examinations; this Contract is for non-State initiated examinations.

1.1 Scope of Work and Deliverables

1.101 IN SCOPE

Audit, identify, process, and deliver unclaimed property from holders that are subject to report such property under the Michigan Uniform Unclaimed Property Act. Such holders may be located anywhere in the United States.

1.102 OUT OF SCOPE

1. Contractor will not transfer securities into cash or act as an account custodian.
2. State of Michigan (State)-initiated unclaimed property examinations.

1.103 ENVIRONMENT

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

1.104 WORK AND DELIVERABLE

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

2. The Contractor will audit, identify, process, and deliver unclaimed property from holders that are subject to report such property under the Michigan Uniform Unclaimed Property Act.

Contractor Response to Task:

ACS understands and will comply with the requirements of this section. ACS will deliver property and register securities as directed by the Department.

ACS is staffed in such a manner that it has significant "bench strength" and succession of personnel is not an issue. ACS has developed sophisticated technologies and systems to support its efforts.



3. The Contractor will deliver or direct holders or its transfer agents to deliver all cash, and/or securities to the Unclaimed Property Division (UPD). The Contractor shall deliver this property to the UPD within 30 calendar days once the property is identified and collected, or comes into the possession or control of the Contractor.

Contractor Response to Task:

ACS understands and will comply with the requirements of this section. ACS has well established procedures and systems for examining holders for unreported unclaimed property. ACS also has adequate staffing to meet the needs of our state clients and the ever increasing workload their business generates. ACS has the technology, through its own systems and through its partnership with ACS Wagers, and the financial stability and capitalization to support all these operations. Based on all these factors, ACS can deliver property to the state within 30 business days after receipt from the holder provided ACS has received the property in accordance with our request to the holder.

4. The Contractor shall produce and deliver a completed holder report, via electronic media in the nationally accepted NAUPA format. Such reports will be delivered together with the property being remitted.

Contractor Response to Task:

The ACS processing and remittance software produces electronic files in the NAUPA standard format. Reports will be delivered concurrently with property being remitted. ACS Wagers, a division of the ACS Unclaimed Property Clearinghouse, administers (and develops on a continuous basis) improvements in the NAUPA standard format. As such, we have first hand knowledge of the specifications and all of their nuances.

The Clearinghouse has been preparing unclaimed property reports in state-specific magnetic media since 1994. Currently, the Clearinghouse reports electronically to 48 jurisdictions. During calendar year 2005, the Clearinghouse delivered over 34,000 individual state reports via magnetic media. In recent years, approximately 95% of the Clearinghouse's audit reports have been transmitted to the states via tape or diskette.

The creation of electronic reports involves multiple steps: Reports are programmatically flagged for delivery from the operating system. This process creates the hard copy reports that accompany the magnetic media. Additional/secondary owners are created from the raw data initially received from the holder or its transfer agent. All reports are "scrubbed" or "cleaned" in receptacles prior to tape or diskette creation. This facilitates providing the states with the most accurate registration information possible. Magnetic media—tapes, cartridges, diskettes, FTPs, or email—are generated from the receptacles, and forwarded to the state. Delivery files are archived, permitting access to any file where questions subsequently arise. Such archived files can also be reloaded, and output recreated.

5. The examinations conducted by the Contractor shall be in accordance with the Michigan Uniform Unclaimed Property Act and generally accepted auditing standards.



Contractor Response to Task:

ACS will perform all services pursuant to the requirements of the Michigan Uniform Unclaimed Property Act. ACS will act as the State's agent to audit holders of unclaimed property, to verify the accuracy and completeness of holder records, and to provide the State with a narrative or other appropriate report of the work completed for each holder examined. ACS understands that the State's objective is to ensure that all material amounts of unclaimed property due to Michigan are identified and collected and that in so doing there is a review that is independent of the holder's review of the records. ACS will provide these services. There are no generally accepted standards for auditing records of unclaimed property; however, ACS has been conducting unclaimed property examinations longer than any other private sector entity and has developed written programs for all its reviews. It is our opinion that these programs are consistent with and, in fact, exceed those requested in this Contract. ACS provides substantial and comprehensive audit and verification procedures to qualify the records that the State seeks in this Contract. ACS does this by following detailed written audit procedures that include:

- taking in all of a holder's records (raw data) relevant to determining unclaimed property liability;
- refusing to accept records that have been edited by holders;
- subjecting these records to numerous manual and electronic testing and verification procedures;
- looking for missing records, inconsistencies in records, unusual occurrences in records, and any other record deficiencies;
- questioning the holders and their agents until all issues are resolved;
- reviewing the entire universe of property in order to verify which accounts are currently escheatable;
- researching and correcting addresses to ensure that each state receives all property that is due;
- conducting multiple quality assurance checks of all work performed;
- providing an appropriately detailed report to accompany each delivery of property to the State.

6. The examination/audit work to be performed will include the following:

- A. **General Ledger and/or Securities Audit** means the examination and audit of the financial records of a holder, wherein the Contractor takes physical custody of the records, either on site or off-site, and performs a physical inspection/examination/audit of such records to determine whether the holder is in compliance with reporting and remitting all unclaimed property to the State. After the audit/examination process is completed, the Contractor prepares the unclaimed property report in proper format (see section 1.104.3), reviews it for accuracy and compliance, and forwards the report and remittance matching the report to the UPD.

Contractor Response to Task:

In supplying its unclaimed property examination services to Michigan, ACS utilizes an auditing and records examination process ("the compliance audit process"). The determination of holder liability and the degree of compliance with the states' abandoned property statutes is the objective of the initial phase of the audit methodology developed by ACS. Multiple complex procedures are performed by ACS to determine the extent, if any, of a holder's unreported unclaimed property liability. Upon determining the existence of an unreported liability the compliance audit process continues until the property in question is remitted to the state(s) to which it is found owing. While the various sources of records for securities and general ledger audits may differ, the degree of scrutiny, due diligence, examination, reconciliation, and quality assurance exercised by ACS in examining those records does not. Records pertaining to each type of audit undergo a comprehensive analysis to determine the extent of the holder's liability and the level of compliance with the State's Uniform Unclaimed Property Act.

A workflow of the compliance audit process is included as Exhibit F. To convey the comprehensive nature of the compliance audit process, the following outline of procedures is also provided:

**I Protocol for Records Validation**

- A. Extraction of unedited/raw data from holder records
- B. Electronic and manual testing of unedited holder records
- C. Analysis of unedited holder records for:
 - 1. completeness
 - 2. inconsistencies
 - 3. unusual occurrences
- D. Resolution of outstanding issues with third party administrators and/or holders
- E. Review of the entire universe of property in question
- F. Researching and correcting of questionable addresses
- G. Implementation of multiple quality controls

II. Role of ACS's Technology in Compliance Examinations

- A. Hardware – IBM AS400
- B. Software Development
 - 1. 202 data conversion programs
 - 2. 86 debit tape programs
 - 3. Data integrity verification programs
- C. Examination Compliance Functionality
 - 1. Unedited records reliability determination
 - 2. Determination of reportable property/underlying securities
 - 3. Conversion of unedited multi-formatted holder data
- D. Comprehensive Analysis of Third Party Administrator/Holder Systems
- E. Systems and Hardware Support for Voluminous Data Processing
 - 1. 143,000,000 owner accounts
 - 2. 329,000,000 property records

III Role of ACS's Record Processing Unit in Compliance Examinations

- A. Audit Processing Unit
 - 1. Assurance of completeness of recovery
 - 2. Assurance of accuracy of recovery
 - 3. Preparation of examination report
- B. Information Services Department
 - 1. Preparation of examination instructions
 - 2. Distribution of source documents
- C. Quality Assurance Unit
 - 1. Implementation of a 70 phase review
- D. Property Request Unit
 - 1. Preparation of hard copy report of examination
 - 2. Property delivery request (demand notification)
 - 3. Verification of property receipt
 - 4. Transfer of property to custody



- E. Reconciliation Unit
 - 1. Receipt of property from holder
 - 2. Reconciliation of property with audit report
- F. Authorization Unit
 - 1. Verification of reconciliation
 - 2. Verification of delivery approvals
- G. Delivery Unit
 - 1. Verification of reconciliation
 - 2. Preparation of delivery packages
 - 3. Notification to custody to release assets
 - 4. Execution of delivery to states

By means of its compliance audit program, ACS is well positioned to meet the needs and objectives of the State of Michigan, as identified in this Contract. ACS will audit, verify, and perform an independent examination of the records of holders to maximize the identification and recovery of all material amounts of unclaimed property owing to Michigan citizens.

- B. **Contractor-Assisted Self-Audit** means the Contractor assists and/or oversees the process whereby a holder performs a general ledger and/or securities self-audit. The Contractor does not generally take physical custody of the financial records of the holder and does not perform an examination or audit of those records. The Contractor informs the holder of the requirements of the unclaimed property laws, details of the reporting requirements, provides the necessary information to the holder or holder's agent regarding unclaimed property and the reporting process and provides other necessary guidance and assistance to the holder so that the holder can accurately perform a self-audit. Upon the holder's completion of the self-audit, the Contractor prepares the unclaimed property report and forwards the report and remittance to the UPD after it has been determined by the Contractor to be complete, in proper format (see section 1.104.3) and in compliance with the Act.

The Contractor will only be compensated for audit work performed on the initial holder engagement. The Contractor will not be compensated for any work that it may perform for the holder in subsequent years. Any special circumstances in which subsequent work should be considered for compensation by the State will require prior written approval by the Contract Compliance Inspector.

Contractor Response to Task:

ACS understands and will comply with the requirements of this section.

6. Claims Processing Services to include the following:
- a. Receive claim forms and documentation from Contract Compliance Inspector or designee weekly (paper or electronic format)
 - b. Enter claim information into UPS2000 Wagers System
 - c. Review claim information
 - d. Provide level one approval or status in Wagers System for claim
 - e. Apply necessary Wagers System status for Treasury to generate claimant letters, if necessary
 - f. Request evidence necessary to adjudicate claim, if necessary
 - g. Review evidence received from claimant
 - h. Approve (level one), deny or apply Wagers System status as directed by Contract Compliance Inspector or designee
 - i. Update Wagers System with necessary information
 - j. Forward/return all inquiries and claim form documentation within forty-eight (48) hours to Contract Compliance Inspector/designee upon updating Wagers System and taking action on claim
 - k. Treasury will provide training to Contractor staff for reviewing/processing claims.



Contractor Response to Task:

ACS currently provides all of the services outlined above to our current claims processing clients and will provide each of these services to the State of Michigan, if awarded a contract, in manner set forth below:

- a. ACS will receive claim forms and documentation from the Contract Compliance Inspector or designee on a weekly basis in paper or electronic format.

For inquiries, ACS will require that the documentation be sent weekly in batches of 25 in order to provide an efficient method of tracking and allow ACS to provide Treasury with a confirmation of receipt. For paper documentation, upon receipt ACS will count each batch and provide confirmation to the State that we have received the appropriate number of claims/batches. For additional information being received for an existing claim, ACS will enter the receipt of information immediately into UPS2000.

For electronic documentation, we would request that the imaging system be linked to UPS2000 so that the workflow can be maintained in UPS2000 and accessible by ACS. As Treasury is interested in pursuing a paperless environment and having the ability to process claims electronically, ACS can assist Treasury in building an imaging system that will integrate seamlessly with UPS2000. ACS has assisted in the implementation of imaging systems in four states.

- b. ACS will enter claim information into the UPS2000 Wagers system.

Upon receipt of claim documentation, and after confirmation of receipt if required, ACS will enter the all corresponding claim information into Treasury's UPS2000 system. If a claim needs to be created, ACS will input all of the claimant information as well as any documentation received. If documentation is being received for an existing claim, ACS will update UPS2000 with the new information as well as verify that the information maintained in UPS2000 matches the information provided on the newly received documentation.

- c. ACS will review claim information.

ACS will review all claim information and determine whether the required documentation has been received in order to approve the claim or if claim is incomplete and additional documentation will be needed to recommend the claim for payment.

- d. ACS will provide level one approval or status in Wagers system for claim(s).

Upon making the determination of claim approval or more evidence required, ACS will apply the appropriate status in Treasury's ACS UPS2000 system. Once this level one approval has been updated, the claim documentation will be forwarded to Treasury. If Treasury reviews and rejects the claim, or does not agree that the claim has sufficient supporting documentation to be approved and paid, Treasury will apply a reject status on UPS2000, continue processing the claim and will notify ACS along with the reason so that we can correct the error on our invoice.

Using an electronic format, Treasury can apply a reject status, notify ACS and ACS will continue to work on the claim until it is approved for payment without mailing claim documentation back and forth between offices.

- e. ACS will apply the necessary Wagers system status for Treasury to generate claimant letters, if necessary.

If a more evidence or other letter needs to be generated and mailed to the claimant, ACS will apply the appropriate status in UPS2000 to allow Treasury to generate these letters in batch at the end of each day or as needed.

- f. ACS will request the evidence necessary to adjudicate the claim, if necessary.

If all required documentation has not been received, ACS will enter the additional documentation requirements in the more evidence tab in the UPS2000 system, using according to the state's guidelines. The system will track the required documentation along with the individual processor who identified that additional documentation was needed. The letter will then be generated and mailed to the claimant by Treasury.

- g. ACS will review the evidence received from the claimants.

Using the guidelines provided by Treasury for all claims assigned, ACS will review the supporting documentation or evidence to approve the claim or request additional information. ACS will ensure that all documentation received is recorded on the UPS2000 system.

- h. ACS will approve or deny as directed by the Contract Compliance Inspector or designee and apply the appropriate status to the Treasury's ACS Wagers UPS2000 system.



Using the Treasury's guidelines, ACS will process or adjudicate claims and update UPS2000 with the corresponding status. In instances when there is additional documentation that is required for approval, ACS will update Treasury's UPS2000 system so that Treasury can simply

generate and mail letters to claimants using a batch process. ACS will then maintain the original documentation on site until the additionally requested documentation is received from the claimant and we can recommend the claim for payment. Once the claim is approved, all documentation pertaining to that claim will be forwarded to Treasury,

- i. ACS will update the state's ACS Wagers UPS2000 system with all necessary information including documentation received and status.

Accessing Treasury's UPS2000 system, ACS will enter all information on each claim assigned to be processed by ACS including the different documents received. When a claim is approved, ACS will assign a level one status as well as enter any other pertinent information to the UPS2000 system and forward all paper documentation to Treasury. For claims that require additional evidence for approval, ACS will apply a more evidence status and list the items for the claimant that are required to allow the claim to be approved. This letter will be generated and mailed by Treasury.

- j. ACS will forward/return all inquiries and claim form documentation to the Contract Compliance Inspector/designee within 48 hours of updating the state's ACS Wagers UPS2000 system and taking action on the claim.

For tracking and security purposes, ACS will forward all claim documentation via insured, 2 day mail using UPS, or other similar approved vendor.

- k. ACS will assign and make available personnel to participate in training provided by Treasury for reviewing/processing claims.

As ACS has been providing claims processing services to states for over 15 years, we have and will assign a knowledgeable project leader that already has experience with processing unclaimed property claims to coordinate the training with Treasury. This will reduce the amount of time required of Treasury staff for training purposes. ACS would also request that Treasury forward the documentation requirements and any other applicable information to ACS for review prior to the training in ensure that the project lead is familiar with Treasury's procedures prior to the training to make the best use of Treasury's time.

1.2 Roles and Responsibilities

1.201 CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES

Contractor must provide a project manager to act as a central point of contact for all contractual activities. The Contractor staff identified below will be involved, in the roles and responsibilities detailed below. An organization chart is included in Article 1, Attachment B.

Contractor Response to Task:

The project manager for ACS will be Jeremy Katz, Vice President. Jeremy is the primary Client Relationship Manager ("CRM") specifically assigned to Michigan. As the CRM for Michigan, Jeremy is responsible for serving as the primary point of contact and maintaining close communication with the State. State personnel are encouraged to contact the assigned CRM with any issues that may arise. The ACS CRM program is designed to facilitate and improve communication, information sharing, and problem solving among ACS and its state clients. ACS employs approximately 170 persons dedicated to providing unclaimed property services to its state clients. ACS is able to hire and retain highly qualified personnel. A majority of the senior management staff and other key personnel have tenure in excess of 10 years. The Senior Vice President and Managing Director, Lynden Lyman, has been with the company for 21 years. The Senior Vice President of Operations, Janet D'Agostino, has been with ACS for 15 years, having worked in every department in the operations section. For examples of other senior personnel with long tenure at ACS and in the unclaimed property field see Exhibit G. ACS includes among its ranks numerous former state unclaimed property officials, including former staff from Iowa, Massachusetts, New Jersey, Texas, Utah, and Virginia.



These individuals bring an important state perspective as well as valuable state experience to the Clearinghouse. ACS has undertaken special recruitment efforts over the last two years to hire additional auditors and other audit staff in order to be able to provide more comprehensive audit and compliance services to state clients. All newly hired auditors receive intensive and specific unclaimed property audit training. Key personnel and their qualifications are listed below.

Senior Personnel

Lynden Lyman

The ACS Unclaimed Property Clearinghouse is headed by Lynden Lyman, Senior Vice President and Managing Director (see resume attached as Exhibit H-1). Mr. Lyman is a licensed attorney with 23 years of experience in unclaimed property law and auditing. Formerly, as an Assistant Attorney General with the State of Iowa, Mr. Lyman participated in more than 50 audits of banks, insurance companies, utilities, and publicly traded companies; he additionally participated in the drafting and adoption of amendments to the Iowa Unclaimed Property law, derived from the 1981 Model Act. From 1986-1993, Mr. Lyman acted as Associate Special Counsel/Consultant of the Clearinghouse. From 1993-1998, Mr. Lyman acted as Division Executive of the Unclaimed Property Services Division of State Street Bank. In this capacity, Mr. Lyman coordinated and participated in the examination of records, preparation of reports, and the recovery of property relative to some 25,000 unclaimed securities issues involving in excess of 12,000 different holders. As Associate Special Counsel/Consultant, Mr. Lyman worked with in excess of 30 states in the drafting and adoption of unclaimed property statutes and regulations. In addition to serving as a resource to all states on matters of law and procedure concerning unclaimed property administration, Mr. Lyman worked directly with Alaska (1986-1987), Connecticut (1991-1995), and Iowa (1985-1996), as a consultant assisting in the examinations performed by the state abandoned property programs. Mr. Lyman has been contributing editor of the five volume legal treatise *Unclaimed Property Law and Reporting Forms* (published by Matthew Bender & Co.), the leading authority on unclaimed property law and administration, over the last 21 years. The table of contents of the treatise is included as Exhibit I to provide a sense of the scope of the book. In acting as contributing editor of the treatise, Mr. Lyman has reviewed and annotated every state unclaimed property law. Additionally, Mr. Lyman has spoken before a number of industry groups concerning unclaimed property compliance, and has participated in various state and national sessions. In his capacity as Managing Director of the ACS Unclaimed Property Clearinghouse, Mr. Lyman continues to engage in the activities described above, as well as overseeing all phases of the Clearinghouse's records review, recovery, and property delivery operations.

In conjunction with his role as manager of the largest reporter of unclaimed property in the United States, Mr. Lyman has gained significant insights into unclaimed general ledger property. His interaction with every state unclaimed property auditing program over the last two decades has exposed him to numerous record keeping issues, legal challenges, and problem solving approaches. In working with thousands of holders, he has developed a keen understanding of how companies approach unclaimed general ledger property—and how their problems with achieving compliance can be overcome. In collaborating with state attorneys general, program legal counsel, and private law firms, he has been able to develop a broad understanding of the issues involving unclaimed obligations. In short, Mr. Lyman is considered one of the leading experts on unclaimed property, and the auditing of general ledger property, in the United States.

Janet D'Agostino

Directly assisting Mr. Lyman is Janet D'Agostino, Senior Vice President. Ms. D'Agostino (see resume attached as Exhibit H-2) has worked for the Clearinghouse since 1991, starting as an operations clerk and advancing throughout the various departments in operations. She has worked in every department of the operations section of the Clearinghouse and currently oversees the back-end process, covering the receipt of property, its reconciliation, and its delivery to the client states. While in the audit processing department Ms. D'Agostino was responsible for the data entry of records received from the holder and the creation of the audit reports. In the audit processing department Ms. D'Agostino was advanced to First Line Manager where she was responsible for the oversight of the audit processing area.



In the reconciliation department as an Operations Officer she was responsible for creating new procedures to streamline the reconciliation process and oversight of the reconciliation of property received to the audit reports. In her current role, she is responsible for ensuring all state contracts are being met regarding the reconciliation and delivery of property. She handles various inquiries from state unclaimed property programs concerning their deliveries, as well as coordinating communications with holders confirming that their property has been delivered.

The importance of the accurate and timely reporting and data transfer of unclaimed property cannot be underestimated. During her career, Ms. D'Agostino has effectively managed the reporting and delivery of more than \$1 billion in unclaimed property. This has required familiarity with a myriad of property type codes, highly technical state reporting formats, and complex money movements. The established competence of Ms. D'Agostino provides assurance that the State will receive its property consistent with the requirements of the IFB.

Jeremy Katz

Jeremy Katz, Vice President (see Bio included as Exhibit H-3), has worked in the field of abandoned property for more than 11 years, first at the National Abandoned Property Processing Corporation and now at ACS. At both companies Jeremy has focused much of his time in the area of client relations and communications. At ACS, Jeremy is responsible for identifying client business needs, developing new service offerings, and maintaining client relationships. Jeremy also heads the ACS Client Relationship Management program. This program is designed to foster better and more frequent communication between ACS and its state clients and to give each state an assigned Client Relationship Manager ("CRM") and backup CRM who are specifically responsible for that state. Jeremy also manages the ACS MissingMoney.com program.

James Sadik

James Sadik, Vice President (see Resume included as Exhibit H-4), has over 17 years of experience in identifying and collecting unclaimed property. His career has involved many aspects of unclaimed property auditing and reporting during his tenure with ACS and four other organizations. Mr. Sadik oversees the audit unit and has significant functional and managerial involvement in all aspects of voluntary securities compliance, having participated in thousands of projects relating to corporate stock transfer and corporate trust audits, including common stock reports, mutual fund and stock brokerage reports, all types of corporate reorganizations, and dividend reinvestment plans. Mr. Sadik's daily input to ACS's operations have included the in depth review of source records; the drafting of operational instructions and audit procedures, designed to outline steps necessary to perform audits; and the detailed quality assurance review of audit reports to ensure compliance with internal standards and adherence to state unclaimed property laws and policies. He also has significant field audit experience in a variety of specific industries, and is particularly familiar with the operational aspects of all sectors of the financial service industry.

Nancy Froude

Nancy Froude, Senior Vice President and Chief Operating Officer (see bio attached as Exhibit H-5), joined ACS in 2004. Ms. Froude has extensive business management and operations experience and corporate legal practice in a high growth sales and client service environment. Her career includes management and legal positions with large companies in the insurance industry. Ms. Froude also served in several positions, including Manager of the Legal Department, Human Resources, and Real Estate; Senior Vice President of Administration and General Counsel; and finally President and Chief Executive Officer of a claims and medical case management outsource solutions firm providing services to Fortune 1000 companies and insurance entities. Ms. Froude has a law degree and is a member of the Massachusetts Bar. At ACS, Ms. Froude works closely with the Managing Director to drive the continuous improvement of operations, the delivery of premium client service, and the development of new service offerings.



Suzanne Darling

Suzanne Darling, Vice President (see Bio included as Exhibit H-6), is in charge of the Richmond, Virginia office of the Clearinghouse. As former counsel to the Virginia Treasurer (and a 20+ year veteran of the Virginia Department of Law), Ms. Darling provided day-to-day legal advice on any and all issues affecting the Commonwealth’s unclaimed property program. Her extensive experience included drafting and advocacy of legislation, review of unclaimed property claims and processing procedures, audit defense, and litigation of unclaimed property matters. Ms. Darling served as the representative of the National Association of Unclaimed Property Administrators (NAUPA) in the Conference of Commissioners on Uniform State Laws’ formulation of the 1995 Uniform Unclaimed Property Act, and was instrumental in Virginia’s adoption of revised legislation. Ms. Darling serves as an important resource to the states for questions concerning policy and administration, as well as a useful “sounding board” for best practices.

Advisor/Trainer: David Epstein

In addition to personnel listed above, our senior advisor/trainer is the nationally-recognized David Epstein (see Bio attached as Exhibit H-7). Mr. Epstein founded the Clearinghouse in 1984. As a reporter to the Uniform Law Commission, Mr. Epstein assisted in drafting the 1981 Model Act, and in subsequent years has played a key role in many states adopting the statute. Mr. Epstein was an advisor to the Uniform Law Commission Drafting Committee, which was responsible for drafting the 1995 Model Act. Mr. Epstein is nationally recognized as the foremost authority on all aspects of unclaimed property. He is the co-author of *Unclaimed Property Law and Reporting Forms*, a five volume legal treatise published by Matthew Bender that is the leading authority on unclaimed property law and administration. Mr. Epstein is also the author of *Escheat and Abandoned Property Laws: Survey and Analysis*, a publication of the American Society of Corporate Secretaries, which is distributed to every major public corporation in the United States. His knowledge and experience—including the auditing of more than 500 holders of all types—provides the Clearinghouse with an unequalled resource in the identification and collection of unclaimed property.

Most of the approaches and processes currently utilized by the Clearinghouse were originally developed by Mr. Epstein. He has continued to work with the Clearinghouse to enhance and improve its overall operations, and he is a member of the Clearinghouse’s management committee.

Mr. Epstein has additionally directly managed specific projects, such as developing new types of unclaimed property audits, coordinating field audits (specifically larger, complex audits and audits of property & casualty insurers), and identifying likely holders of large volumes of unreported property.

1.202 STATE STAFF, ROLES, AND RESPONSIBILITIES

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

1.203 OTHER ROLES AND RESPONSIBILITIES - Reserved

1.3 Project Plan

1.301 PROJECT PLAN MANAGEMENT

1. The Contractor will carry out this project under the direction and control of the Contract Compliance Inspector.

Contractor Response to Task:

Acknowledged.



2. Although there will be continuous liaison with the Contractor team, the Contract Compliance Inspector will meet monthly at minimum, or as requested by the Contract Compliance Inspector, with the Contractor's project manager for the purpose of reviewing progress and providing necessary guidance to the Contractor in solving problems which arise.

Contractor Response to Task:

ACS understands and will comply with the requirements of this section.

3. The Contractor will submit brief written monthly summaries of progress which outline the work accomplished during the reporting period; work to be accomplished during the subsequent reporting period; problems, real or anticipated, which should be brought to the attention of the client agency's project director; and notification of any significant deviation from previously agreed-upon work plans. A copy of this report will be forwarded to the named buyer in Purchasing Operations.

Contractor Response to Task:

ACS understands and will comply with the requirements of this section. The required information is provided in two reports: the Agreed to Participate List (ATP) and the Work in Progress Report (WIP). The ATP provides information concerning all new examinations and record processing to be commenced. The WIP provides the State with information about reports in process, property requested, property in reconciliation, and property pending delivery. Samples of these reports are provided as Exhibits J and K.

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

Contractor Response to Task:

ACS understands and will comply with the requirements of this section. ACS's organizational structure and staffing are set out in Article 1, Attachment C as required. These documents will be updated as needed upon contract execution. ACS will notify the State of proposed projects by means of an Agreed to Participate ("ATP") list. ACS will keep the State advised of the ongoing status and progress of all projects by means of a monthly Work in Progress report ("WIP"). In addition to these standard reports, the ACS project manager and Client Relationship Manager, Jeremy Katz, will have specific responsibility for keeping Michigan updated regarding the status of the contract and for troubleshooting issues and problems that may arise in the course of the relationship.

1.302 REPORTS

See sections 1.104.3 and 1.301 for required reports.



1.4 *Project Management*

1.401 **ISSUE MANAGEMENT**

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

Contractor Response to Task:

In addition to written reports provided to all clients (including the ATP and WIP) and the assigned project manager, ACS provides direct feedback and communication concerning any problems, issues, or concerns encountered in the course of work undertaken for its clients. These communications come from personnel assigned to the daily work for the client state as well as the state's Client Relationship Manager. ACS assigns a Client Relationship Manager ("CRM") and a backup CRM to each state client. The CRMs are responsible for serving as the primary point of contact and maintaining close communication with the client. State personnel are encouraged to contact the CRM with any issues that may arise. The ACS CRM program is designed to facilitate and improve communication, information sharing, and problem solving among ACS and its state clients.

1.402 **RISK MANAGEMENT**

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

Contractor Response to Task:

ACS's risk management processes include bonding of all employees, criminal background and credit checks on all employment applicants, drug screening of new hires, a requirement that all employees sign a trade secret and confidentiality agreement upon employment, extensive training and cross training of employees, and a corporate emphasis on ethical behavior, including a requirement that all new hires read the ACS Code of Ethical Business Conduct within one week of employment and complete the Code of Ethical Business Conduct comprehensive new hire training by the close of the third full month of employment. In addition, all employees must undertake annual ethics training and successfully complete a written test. The company also has an Ethics Officer whose primary responsibility is to oversee all ethics matters company-wide.

1.403 **CHANGE MANAGEMENT**

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

Contractor Response to Task:

ACS understands and will comply with the requirements of this section. ACS will work with the State to incorporate any changes that may be required.



1.5 Acceptance - Reserved

1.6 Compensation and Payment

1.601 COMPENSATION AND PAYMENT

This Contract is a firm, fixed price Contract. Payment/invoicing for this Contract will occur monthly (see section 2.092).

Pricing is all inclusive. Price cannot exceed 12% of the value of the property being remitted per the Department of Treasury's appropriation bill, section 919.

1.7 Additional Terms and Conditions Specific to this SOW - Reserved



Article 1, Attachment A
Pricing

Pricing for Unclaimed Property Audits

	Contingency Fee		Quantity	Total
A. General Ledger Audit				
2. Value of Assets Remitted to State During Contract Period				
a. \$0-\$10,000,000	<u>12%</u>	x	\$ 10,000,000.00	<u>\$1,200,000.00</u>
b. \$10,000,000.01 to \$30,000,000	<u>12%</u>	x	\$ 30,000,000.00	<u>\$3,600,000.00</u>
c. \$30,000,000.01 to \$50,000,000	<u>12%</u>	x	\$ 50,000,000.00	<u>\$6,000,000.00</u>
d. \$50,000,000.01 or greater	<u>12%</u>	x	\$ 60,000,000.00	<u>\$7,200,000.00</u>
 B. Securities Audit				
1. Value of Assets Remitted to State During Contract Period				
a. \$0-\$10,000,000	<u>12%</u>	x	\$ 10,000,000.00	<u>\$1,200,000.00</u>
b. \$10,000,000.01 to \$30,000,000	<u>12%</u>	x	\$ 30,000,000.00	<u>\$3,600,000.00</u>
c. \$30,000,000.01 to \$50,000,000	<u>12%</u>	x	\$ 50,000,000.00	<u>\$6,000,000.00</u>
d. \$50,000,000.01 or greater	<u>12%</u>	x	\$ 60,000,000.00	<u>\$7,200,000.00</u>
 C. Contractor-Assisted Auditor				
1. Value of Assets Remitted to State During Contract Period				
a. \$0-\$10,000,000	<u>12%</u>	x	\$ 10,000,000.00	<u>\$1,200,000.00</u>
b. \$10,000,000.01 to \$30,000,000	<u>12%</u>	x	\$ 30,000,000.00	<u>\$3,600,000.00</u>
c. \$30,000,000.01 to \$50,000,000	<u>12%</u>	x	\$ 50,000,000.00	<u>\$6,000,000.00</u>
d. \$50,000,000.01 or greater	<u>12%</u>	x	\$ 60,000,000.00	<u>\$7,200,000.00</u>

Note: Pricing must be all inclusive. Price Proposals from Contractors cannot exceed 12% of the value of the property being remitted per the Department of Treasury's appropriation bill, section 919.



Pricing For Claims Processing:

a. Review and Establish New Claim

1) Claim Forms Received via Hard-copy

Quantity per year*	Unit Cost		Quantity	Total
1. 0 to 5,000	\$ 7.75	X	5,000	\$ 38,750.00
2. 5,001 to 10,000	\$ 7.75	X	10,000	\$ 77,500.00
3. 10,001 to 15,000	\$ 7.75	X	15,000	\$ 116,250.00
4. 15,001 to 20,000	\$ 7.50	X	20,000	\$ 150,000.00
5. 20,001 to 25,000	\$ 7.50	X	25,000	\$ 187,500.00
6. 25,001 to 30,000	\$ 7.50	X	30,000	\$ 225,000.00
7. 30,001 or more	\$ 7.25	X	40,000	\$ 290,000.00

* Based on an annual volume with a monthly minimum of 1,000 claims unless 30 days advance notice is provided of lower expected volume

2) Claim Forms Received Electronically

Quantity per year*	Unit Cost		Quantity	Total
1. 0 to 5,000	\$ 5.75	X	5,000	\$ 28,750.00
2. 5,001 to 10,000	\$ 5.75	X	10,000	\$ 57,500.00
3. 10,001 to 15,000	\$ 5.75	X	15,000	\$ 86,250.00
4. 15,001 to 20,000	\$ 5.25	X	20,000	\$ 105,000.00
5. 20,001 to 25,000	\$ 5.25	X	25,000	\$ 131,250.00
6. 25,001 to 30,000	\$ 5.25	X	30,000	\$ 157,500.00
7. 30,001 or more	\$ 4.75	X	40,000	\$ 190,000.00

* Based on an annual volume with a monthly minimum of 1,000 claims unless 30 days advance notice is provided of lower expected volume

b. Approve/Deny Claim

1) Claim Forms Received via Hard-copy

Quantity per year *	Unit Cost		Quantity	Total
1. 0 to 5,000	\$16.50	X	5,000	\$ 82,500.00
2. 5,001 to 10,000	\$16.50	X	10,000	\$165,000.00
3. 10,001 to 15,000	\$16.50	X	15,000	\$247,500.00
4. 15,001 to 20,000	\$16.00	X	20,000	\$320,000.00
5. 20,001 to 25,000	\$16.00	X	25,000	\$400,000.00
6. 25,001 to 30,000	\$16.00	X	30,000	\$480,000.00
7. 30,001 or more	\$15.50	X	40,000	\$620,000.00

* Based on an annual volume with a monthly minimum of 1,000 claims unless 30 days advance notice is provided of lower expected volume

2) Claim Forms Received Electronically (Imaged Claims)

Quantity per year *	Unit Cost		Quantity	Total
1. 0 to 5,000	\$14.50	X	5,000	\$ 72,500.00
2. 5,001 to 10,000	\$14.50	X	10,000	\$145,000.00
3. 10,001 to 15,000	\$14.50	X	15,000	\$217,500.00
4. 15,001 to 20,000	\$14.00	X	20,000	\$280,000.00
5. 20,001 to 25,000	\$14.00	X	25,000	\$350,000.00
6. 25,001 to 30,000	\$14.00	X	30,000	\$420,000.00
7. 30,001 or more	\$13.50	X	40,000	\$540,000.00

* Based on an annual volume with a monthly minimum of 1,000 claims unless 30 days advance notice is provided of lower expected volume



The above quoted unit price is not based on a cumulative rate. and applies to the number stated in each quantity and then adjust for the next quantity. Therefore, the first 5,000 transactions are at one cost and then the next 5,000 are then billed at the next cost as the unit cost is not charged at a cumulative rate.

Treasury currently has a backlog of 12,000 inquiries/new claims and 9,000 claims. This volume is anticipated to increase over the next year, and the State anticipates sending approximately 1,000 inquiries/new claims per month to the Contractor over the duration of the Contract.



Article 1, Attachment B
Organizational Chart, including Key Personnel

Key Personnel

ACS employs approximately 170 persons dedicated to providing unclaimed property services to its state clients. ACS is able to hire and retain highly qualified personnel. A majority of the senior management staff and other key personnel have tenure in excess of 10 years. The Senior Vice President and Managing Director, Lynden Lyman, has been with the company for 21 years. The Senior Vice President of Operations, Janet D'Agostino, has been with ACS for 15 years, having worked in every department in the operations section. For examples of other senior personnel with long tenure at ACS and in the unclaimed property field see Exhibit G. ACS includes among its ranks numerous former state unclaimed property officials, including former staff from Iowa, Massachusetts, New Jersey, Texas, Utah, and Virginia. These individuals bring an important state perspective as well as valuable state experience to the Clearinghouse. ACS has undertaken special recruitment efforts over the last two years to hire additional auditors and other audit staff in order to be able to provide more comprehensive audit and compliance services to state clients. All newly hired auditors receive intensive and specific unclaimed property audit training. Key personnel and their qualifications are listed below.

Senior ACS PersonnelLynden Lyman

The ACS Unclaimed Property Clearinghouse is headed by Lynden Lyman, Senior Vice President and Managing Director (see resume attached as Exhibit H-1). Mr. Lyman is a licensed attorney with 23 years of experience in unclaimed property law and auditing. Formerly, as an Assistant Attorney General with the State of Iowa, Mr. Lyman participated in more than 50 audits of banks, insurance companies, utilities, and publicly traded companies; he additionally participated in the drafting and adoption of amendments to the Iowa Unclaimed Property law, derived from the 1981 Model Act. From 1986-1993, Mr. Lyman acted as Associate Special Counsel/Consultant of the Clearinghouse. From 1993-1998, Mr. Lyman acted as Division Executive of the Unclaimed Property Services Division of State Street Bank. In this capacity, Mr. Lyman coordinated and participated in the examination of records, preparation of reports, and the recovery of property relative to some 25,000 unclaimed securities issues involving in excess of 12,000 different holders. As Associate Special Counsel/Consultant, Mr. Lyman worked with in excess of 30 states in the drafting and adoption of unclaimed property statutes and regulations. In addition to serving as a resource to all states on matters of law and procedure concerning unclaimed property administration, Mr. Lyman worked directly with Alaska (1986-1987), Connecticut (1991-1995), and Iowa (1985-1996), as a consultant assisting in the examinations performed by the state abandoned property programs. Mr. Lyman has been contributing editor of the five volume legal treatise *Unclaimed Property Law and Reporting Forms* (published by Matthew Bender & Co.), the leading authority on unclaimed property law and administration, over the last 21 years. The table of contents of the treatise is included as Exhibit I to provide a sense of the scope of the book. In acting as contributing editor of the treatise, Mr. Lyman has reviewed and annotated every state unclaimed property law. Additionally, Mr. Lyman has spoken before a number of industry groups concerning unclaimed property compliance, and has participated in various state and national sessions. In his capacity as Managing Director of the ACS Unclaimed Property Clearinghouse, Mr. Lyman continues to engage in the activities described above, as well as overseeing all phases of the Clearinghouse's records review, recovery, and property delivery operations.

In conjunction with his role as manager of the largest reporter of unclaimed property in the United States, Mr. Lyman has gained significant insights into unclaimed general ledger property. His interaction with every state unclaimed property auditing program over the last two decades has exposed him to numerous record keeping issues, legal challenges, and problem solving approaches. In working with thousands of holders, he has developed a keen understanding of how companies approach unclaimed general ledger property—and how their problems with achieving compliance can be overcome. In collaborating with state attorneys general, program legal counsel, and private law firms, he has been able to develop a broad understanding of the issues involving unclaimed obligations. In short, Mr. Lyman is considered one of the leading experts on unclaimed property, and the auditing of general ledger property, in the United States.

Janet D'Agostino

Directly assisting Mr. Lyman is Janet D'Agostino, Senior Vice President. Ms. D'Agostino (see resume attached as Exhibit H-2) has worked for the Clearinghouse since 1991, starting as an operations clerk and advancing throughout the various departments in operations. She has worked in every department of the operations section of the Clearinghouse and currently oversees the back-end process, covering the receipt of property, its reconciliation, and its delivery to the client states. While in the audit processing department Ms. D'Agostino was responsible for the data entry of records received from the holder and the creation of the audit reports. In the audit processing department Ms. D'Agostino was advanced to First Line Manager where she was responsible for the oversight of the audit processing area. In the reconciliation department as an Operations Officer she was responsible for creating new procedures to streamline the reconciliation process and oversight of the reconciliation of property received to the audit reports. In her current role, she is responsible for ensuring all state contracts are being met regarding the reconciliation and delivery of property. She handles various inquiries from state unclaimed property programs concerning their deliveries, as well as coordinating communications with holders confirming that their property has been delivered.

The importance of the accurate and timely reporting and data transfer of unclaimed property cannot be underestimated. During her career, Ms. D'Agostino has effectively managed the reporting and delivery of more than \$1 billion in unclaimed property. This has required familiarity with a myriad of property type codes, highly technical state reporting formats, and complex money movements. The established competence of Ms. D'Agostino provides assurance that the State will receive its property consistent with the requirements of the IFB.

Jeremy Katz

Jeremy Katz, Vice President (see Bio included as Exhibit H-3), has worked in the field of abandoned property for more than 11 years, first at the National Abandoned Property Processing Corporation and now at ACS. At both companies Jeremy has focused much of his time in the area of client relations and communications. At ACS, Jeremy is responsible for identifying client business needs, developing new service offerings, and maintaining client relationships. Jeremy also heads the ACS Client Relationship Management program. This program is designed to foster better and more frequent communication between ACS and its state clients and to give each state an assigned Client Relationship Manager ("CRM") and backup CRM who are specifically responsible for that state. Jeremy also manages the ACS MissingMoney.com program.

James Sadik

James Sadik, Vice President (see Resume included as Exhibit Q-3), has over 17 years of experience in identifying and collecting unclaimed property. His career has involved many aspects of unclaimed property auditing and reporting during his tenure with ACS and four other organizations. Mr. Sadik oversees the audit unit and has significant functional and managerial involvement in all aspects of voluntary securities compliance, having participated in thousands of projects relating to corporate stock transfer and corporate trust audits, including common stock reports, mutual fund and stock brokerage reports, all types of corporate reorganizations, and dividend reinvestment plans. Mr. Sadik's daily input to ACS's operations have included the in-depth review of source records, the drafting of operational instructions and audit procedures designed to outline steps necessary to perform audits, and the detailed quality assurance review of audit reports to ensure compliance with internal standards and adherence to state unclaimed property laws and policies. He also has significant field audit experience in a variety of specific industries, and is particularly familiar with the operational aspects of all sectors of the financial service industry.

Nancy Froude

Nancy Froude, Senior Vice President and Chief Operating Officer (see Bio attached as Exhibit H-4), joined ACS in 2004. Ms. Froude has extensive business management and operations experience and corporate legal practice in a high growth sales and client service environment. Her career includes management and legal positions with large companies in the insurance industry. Ms. Froude also served in several positions, including Manager of the Legal Department, Human Resources, and Real Estate; Senior Vice President of Administration and General Counsel; and finally President and Chief Executive Officer of a claims and medical case management outsource solutions firm providing services to Fortune 1000 companies and insurance entities. Ms. Froude has a law degree and is a member of the Massachusetts Bar. At ACS, Ms. Froude works closely with the Managing Director to drive the continuous improvement of operations, the delivery of premium client service, and the development of new service offerings.

Suzanne Darling

Suzanne Darling, Vice President (see Bio included as Exhibit H-5), is in charge of the Richmond, Virginia office of the Clearinghouse. As former counsel to the Virginia Treasurer (and a 20+ year veteran of the Virginia Department of Law), Ms. Darling provided day-to-day legal advice on any and all issues affecting the Commonwealth's unclaimed property program. Her extensive experience included drafting and advocacy of legislation, review of unclaimed property claims and processing procedures, audit defense, and litigation of unclaimed property matters. Ms. Darling served as the representative of the National Association of Unclaimed Property Administrators (NAUPA) in the Conference of Commissioners on Uniform State Laws' formulation of the 1995 Uniform Unclaimed Property Act, and was instrumental in Virginia's adoption of revised legislation. Ms. Darling serves as an important resource to the states for questions concerning policy and administration, as well as a useful "sounding board" for best practices.

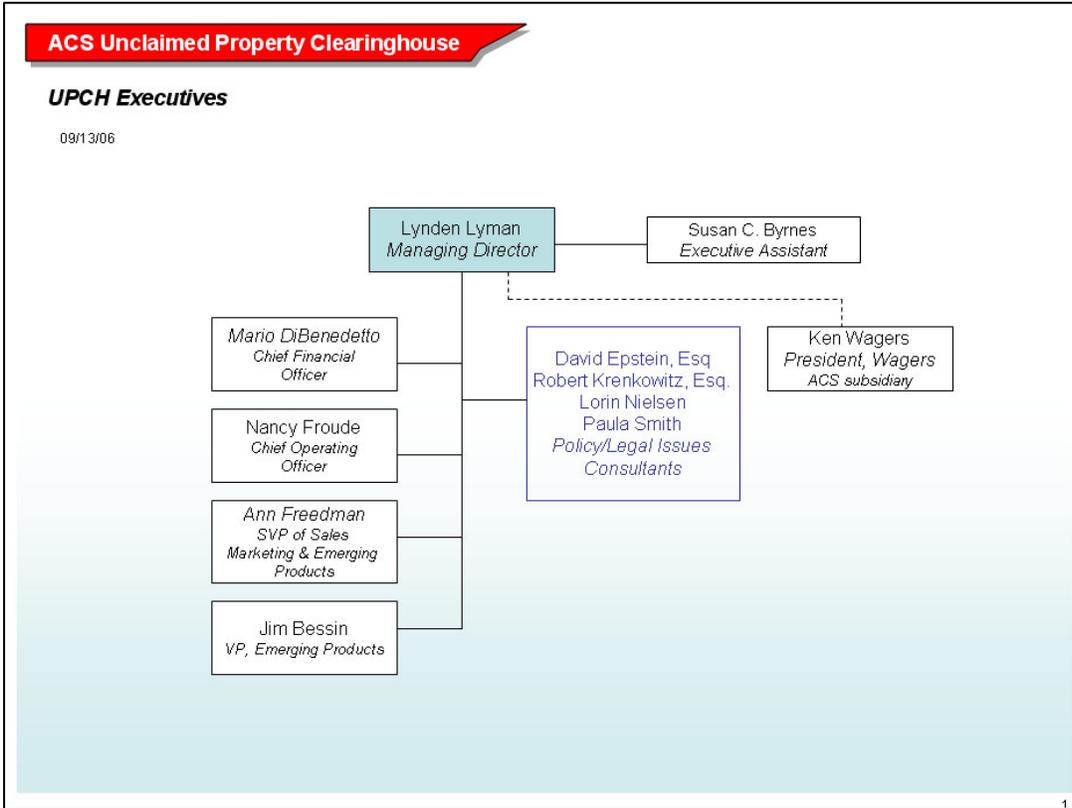
Advisor/Trainer: David Epstein

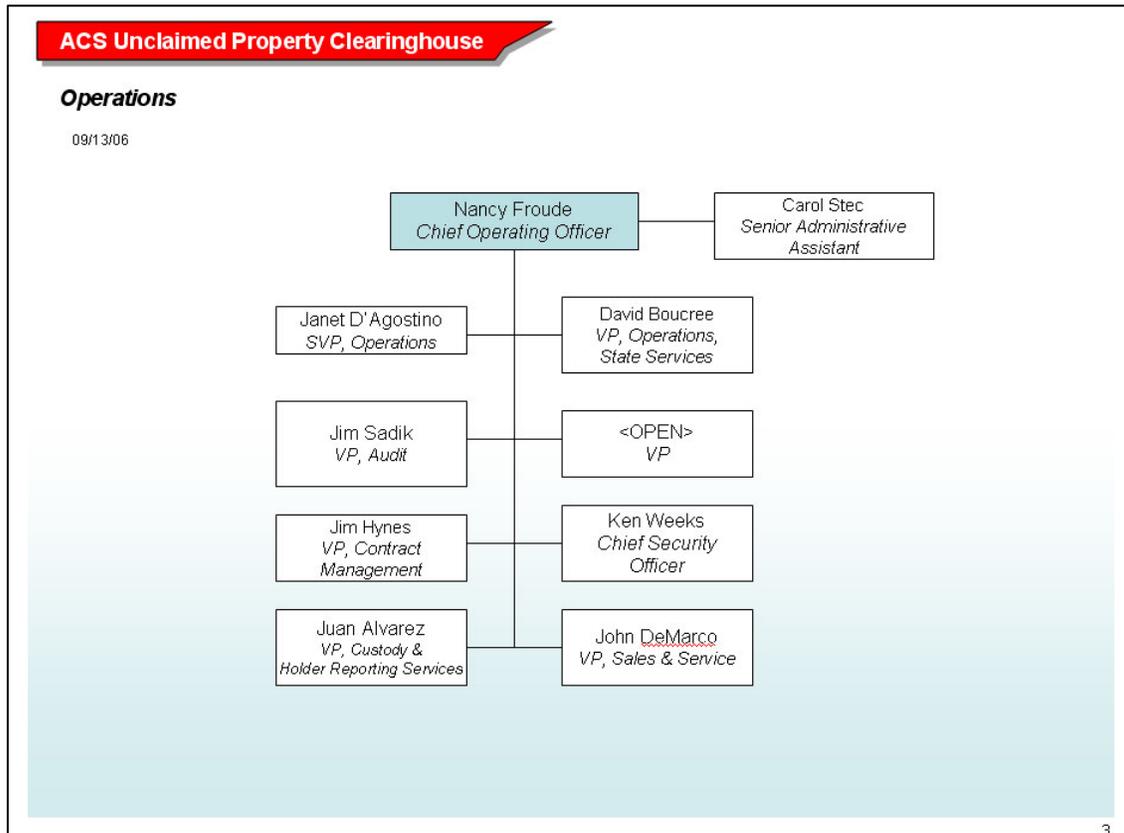
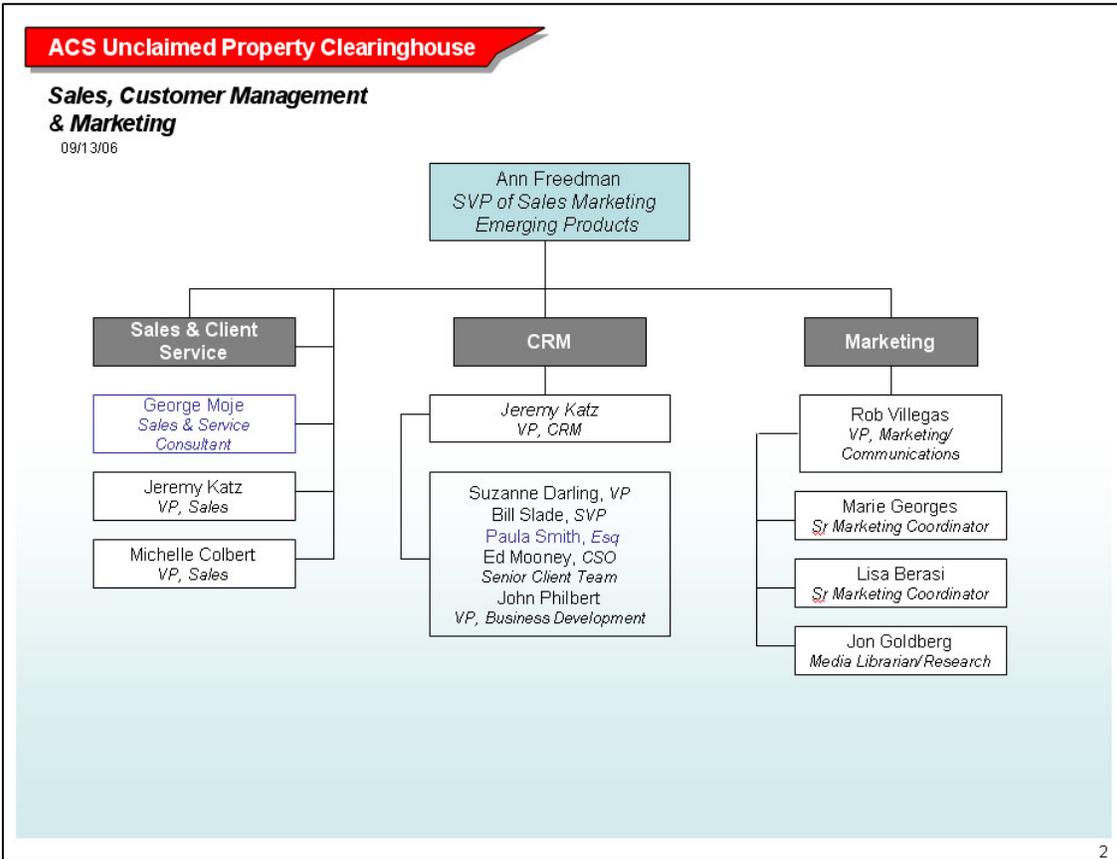
In addition to personnel listed above, our senior advisor/trainer is the nationally-recognized David Epstein (see Bio attached as Exhibit H-7). Mr. Epstein founded the Clearinghouse in 1984. As a reporter to the Uniform Law Commission, Mr. Epstein assisted in drafting the 1981 Model Act, and in subsequent years has played a key role in many states adopting the statute. Mr. Epstein was an advisor to the Uniform Law Commission Drafting Committee, which was responsible for drafting the 1995 Model Act. Mr. Epstein is nationally recognized as the foremost authority on all aspects of unclaimed property. He is the co-author of *Unclaimed Property Law and Reporting Forms*, a five volume legal treatise published by Matthew Bender that is the leading authority on unclaimed property law and administration. Mr. Epstein is also the author of *Escheat and Abandoned Property Laws: Survey and Analysis*, a publication of the American Society of Corporate Secretaries, which is distributed to every major public corporation in the United States. His knowledge and experience—including the auditing of more than 500 holders of all types—provides the Clearinghouse with an unequalled resource in the identification and collection of unclaimed property.

Most of the approaches and processes currently utilized by the Clearinghouse were originally developed by Mr. Epstein. He has continued to work with the Clearinghouse to enhance and improve its overall operations, and he is a member of the Clearinghouse's management committee. Mr. Epstein has additionally directly managed specific projects, such as developing new types of unclaimed property audits, coordinating field audits (specifically larger, complex audits and audits of property & casualty insurers), and identifying likely holders of large volumes of unreported property.



Organizational Chart



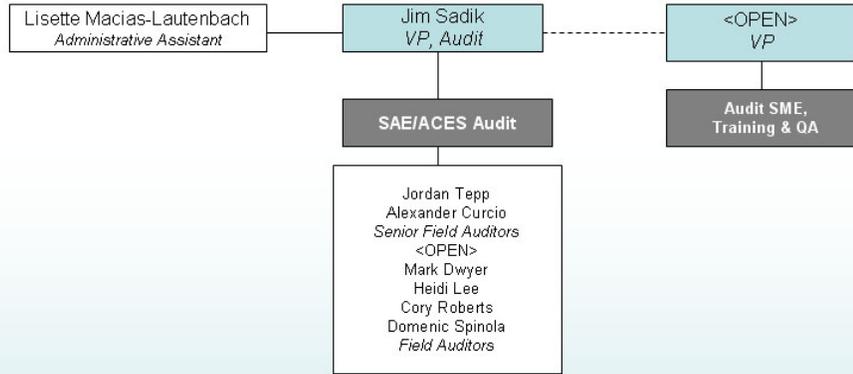




ACS Unclaimed Property Clearinghouse

ACES/SAE - Audit

09/13/06

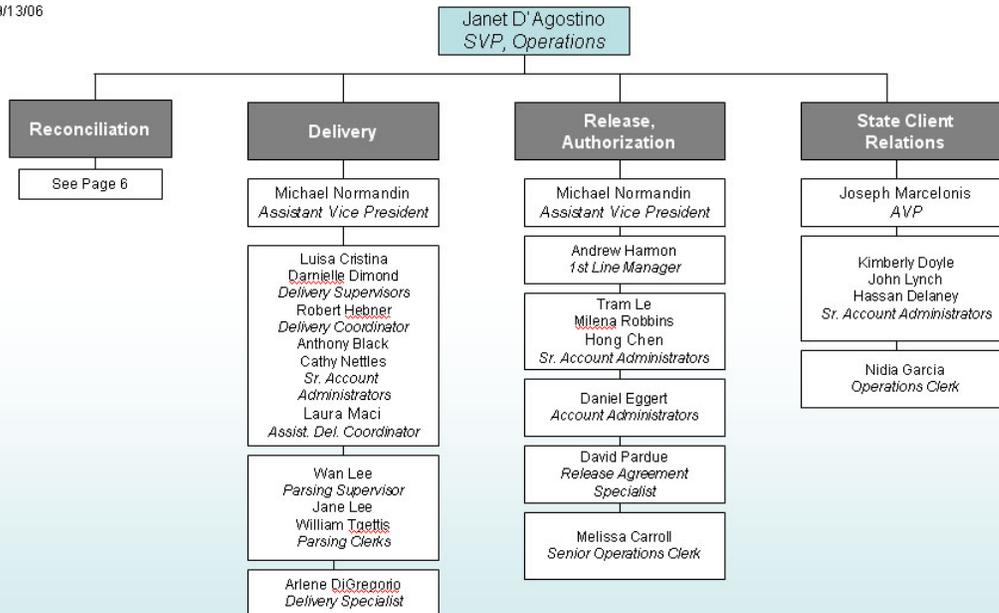


4

ACS Unclaimed Property Clearinghouse

UPCH Operations

09/13/06



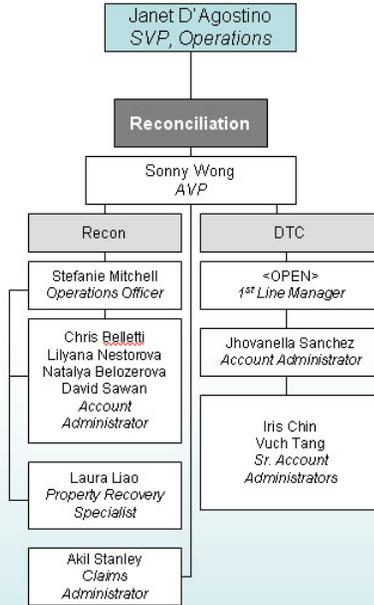
5



ACS Unclaimed Property Clearinghouse

UPCH Operations

09/13/06





Article 1, Attachment C
Project Plan

ACS will begin by providing the State an Agreed to Participate ("ATP") list showing holders to be examined. A sample ATP list is included as Exhibit J. Each month, ACS will supply the State with a Work in Progress ("WIP") report giving detailed information concerning the status and progress of each examination. A sample WIP is attached as Exhibit K. The ACS project manager will also be in close contact with the State's Contract Compliance Inspector concerning the progress of each examination and any issues or problems with the examinations. For each examination, ACS will apply the work processes described below to audit the holder's unedited records and make an independent determination of the holder's unclaimed property liability to the State of Michigan.

**PROCESS FOR PREPARING PROCESSING
AND DELIVERING REPORTS**

ACS has an established process for preparing its unclaimed property reports. Records that are received from various holders are sent to the Information Services department where a set of written instructions (scrub) on how to process the issue is prepared. As part of the process the Information Services unit reviews the records received to be sure they are complete in addition to other documents such as a Capital Changes history, a cash dividend payment history, and any special instructions that relate to the particular issue.

Once the Information Services Unit has completed its procedures and compiled the necessary documents, the Processing group commences its work. Source documents are first loaded to the processing system for initial review. Any hard copy records are data entered, double keyed for accuracy, and compared to totals provided by the company. Any necessary data conversion programs are written by ACS programmers. The source documents are then evaluated through use of numerous computer diagnostic programs. All records are evaluated against a series of abandonment tables, which identify the dormancy period for each property type by state. All property is reviewed to determine which items are reportable and which are ineligible.

Upon completion of the determination of reportable property, a 70-step Quality Assurance review is performed, including a manual, account-by-account review of the report. All instructions are checked against the report to confirm that all procedures have been followed and all reportable property correctly identified.

The Quality Assurance Unit then signs off on the issue and sends it to the Property Request unit, which creates a letter and a hard copy of the report instructing the holder to remit the reportable property to ACS.

The Clearinghouse also has a well established procedure for transferring property processed through the system. When a holder remits the property that is requested based on our audit findings, the property is received and logged into our tracking system by the Reconciliation Unit. Within 24 hours of receipt of property we deposit it with our Custodian, Mellon Bank. The Reconciliation Unit will then balance the remitted amount to the audit report reflecting what is owed each state. If there is an out of balance situation, the administrator in this unit works with the holder to determine the next course of action. Examples of why a report does not balance include: owners have come forward and the holder has paid them prior to remitting the property; a dividend was issued prior to ACS receiving the property; or a corporate action has occurred. The administrator makes all changes necessary or obtains the additional property needed to reconcile the report. Once the report is reconciled and reviewed for accuracy, the issue moves to the Authorization Unit. This unit verifies that the issue is in balance and that the report is accurate. The unit also verifies that ACS has approval to deliver the report to the state and completes a delivery authorization package containing delivery instructions. After the issue is reviewed for accuracy it moves to the Delivery Unit. This Unit again verifies that the report is in balance and completes the package that will be sent to the state, including the owner detail report, other documents required by the state, diskette(s), a check or wire, and a stock certificate or DTC transfer of stock. After the package is reviewed for accuracy, it is mailed to the states.



TECHNOLOGY

The procedures described above are greatly augmented by technology. ACS utilizes a compliance-audit data system that is unique in the search and audit of holder/agent recordkeeping systems, verifying the accuracy of the records being examined. For example, the system automatically notes the absence of missing records (i.e., missing dividends), unusual last activity dates (all owners become lost on the same date), identifies unexplained account activity (cashing of an individual check by a "lost" shareholder), and analyzes other data in order to determine the reliability of information. Additionally, the system utilized by ACS automatically calculates all amounts owing to missing owners based on the corporate history of the mutual fund, stock brokerage house, or other holder. These "imputed" amounts are then compared with the holder's records in order to verify the accuracy of those records. Thus, the systems audit can verify the accuracy of holder/agent records, rather than simply compile, sort, and age data.

The technology incorporated in the Clearinghouse unclaimed property system is not limited to merely identifying all reportable property. The system additionally is programmed to ensure that property is reported to the correct state. Each account is analyzed to confirm that the state code and zip code as contained in the holder's records are accurate (which often results in the identification of incorrect state codes); artificial last known addresses (such as those "care of" the company to the transfer agent) substituted for the last known address on suppressed-mail accounts are targeted for further research; and incomplete registrations are consolidated in an attempt to assemble addresses sufficient for the delivery of first class mail.

It is our belief that the system designed and maintained by ACS is unique and no other processing system includes these sophisticated auditing systems (the system currently being utilized is the third-generation unclaimed property system built by ACS, and would cost in excess of \$7 million to duplicate).



Article 2 – General Terms and Conditions

Contractors Response to Article 2:

ACS acknowledges and agrees to the terms and conditions listed in this section as written.

2.010 Contract Structure and Administration

2.011 Definitions

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

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

2.012 Attachments and Exhibits

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

2.013 Statements of Work

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



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

2.014 Issuing Office

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

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

2.015 Contract Compliance Inspector

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

Gonzalo Llano
Michigan Department of Treasury
Unclaimed Property Division
PO Box 30756
Lansing, MI 48909
(517) 636-5207

2.020 Contract Objectives/Scope/Background**2.021 Background - Reserved****2.022 Purpose - Reserved****2.023 Objectives and Scope - Reserved****2.024 Interpretation - Reserved****2.025 Form, Function and Utility**

If the Contract is for use of more than one (1) 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 April 1, 2007 through March 31, 2010. All outstanding Purchase Orders shall also expire upon the termination (cancellation for any of the reasons listed in 2.210) of the Contract, unless otherwise extended pursuant to the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

2.033 Renewal(s)

This Contract may be renewed in writing by mutual agreement of the parties not less than 30 days before its expiration. The Contract may be renewed for up to 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 30 days of shadowing unless parties agree to a different time period. The Contractor with the State shall review any Key Personnel replacements, and appropriate transition planning will be established. Any Unauthorized Removal may be considered by the State to be a material breach of the Contract, in respect of which the State may elect to exercise its rights under **Section 2.210**.

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

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

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

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



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

(e) Staffing Levels.

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

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

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

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

2.042 Contractor Identification

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

2.043 Cooperation with Third Parties

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

**2.044 Subcontracting by Contractor**

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

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

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

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

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

2.045 Contractor Responsibility for Personnel

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

2.050 State Standards**2.051 Existing Technology Standards**

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

2.052 PM Methodology Standards - Reserved**2.053 Adherence to Portal Technology Tools - Reserved**

**2.054 Acceptable Use Policy**

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

2.060 Deliverables**2.061 Ordering**

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

2.062 Software - Reserved**2.063 Hardware - Reserved****2.064 Equipment to be New and Prohibited Products - Reserved**2.070 Performance**2.071 Performance, In General**

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

2.072 Time of Performance

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

2.073 Liquidated Damages - Reserved

**2.074 Bankruptcy**

If Contractor shall file for protection under the bankruptcy laws, or if an involuntary petition shall be filed against Contractor and not removed within 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) - Reserved2.080 Delivery and Acceptance of Deliverables**2.081 Delivery Responsibilities**

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

- (a) Shipment responsibilities - Services performed/Deliverables provided under this Contract shall be delivered "F.O.B. Destination, within Government Premises." The Contractor shall have complete responsibility for providing all Services/Deliverables to all site(s) unless otherwise stated. Actual delivery dates will be specified on the individual purchase order.
- (b) Delivery locations - Services will be performed/Deliverables will be provided at every State of Michigan location within Michigan unless otherwise stated in the SOW. Specific locations will be provided by the State or upon issuance of individual purchase orders.
- (c) Damage Disputes - At the time of delivery to State Locations, the State shall examine all packages. The quantity of packages delivered shall be recorded and any obvious visible or suspected damage shall be noted at time of delivery using the shipper's delivery document(s) and appropriate procedures to record such.

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

**2.082 Delivery of Deliverables**

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

2.083 Testing - Reserved**2.084 Approval of Deliverables, In General - Reserved****2.085 Process For Approval of Written Deliverables - Reserved****2.086 Process for Approval of Services**

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

2.087 Process for Approval of Physical Deliverables - Reserved**2.088 Final Acceptance**

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

2.090 Financial**2.091 Pricing**

(a) Fixed Prices for Services/Deliverables
Each Statement of Work/PO issued under this Contract shall specify (or indicate by reference to the appropriate Contract Exhibit) the firm, fixed prices for all Services/Deliverables, and the associated payment milestones and payment amounts. The State may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.



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

If the scope of the Services/Deliverables under any Statement of Work issued under this Contract is subsequently reduced by the State, the parties shall negotiate an equitable reduction in Contractor's charges under such Statement of Work commensurate with the reduction in scope.

(c) Services/Deliverables Covered

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

(d) Reserved

2.092 Invoicing and Payment Procedures and Terms

(a) Invoicing and Payment – In General

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

(ii) Each Contractor invoice will show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements. Prompt payment by the State is contingent on the Contractor's invoices showing the amount owed by the State minus any holdback amount to be retained by the State in accordance with **Section 2.094**.

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

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

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

(c) Out-of-Pocket Expenses

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

(d) Pro-ration

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

(e) Antitrust Assignment

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

(f) Final Payment

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

**2.093 State Funding Obligation**

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

2.094 Reserved**2.095 Electronic Payment Availability**

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

2.100 Contract Management**2.101 Contract Management Responsibility**

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

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

2.102 Problem and Contract Management Procedures

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

2.104 System Changes

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

2.105 Reserved

2.106 Change Requests

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

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

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

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

(a) Change Requests

(i) State Requests

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

(ii) Contractor Recommendations

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



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

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

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

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

2.107 Management Tools

Contractor will use an automated tool for planning, monitoring and tracking the Contract's progress. In addition, Contractor shall use automated project management tools as reasonably necessary to perform the Services, which tools shall include the capability to produce through the end of the Contract: (i) staffing tables with names of personnel assigned to Contract tasks, (ii) project plans showing tasks, subtasks, Deliverables and the resources required and allocated to each (including detailed plans for all Services to be performed within the next 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 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 10 Days prior written notice and at all reasonable times, the State's representatives shall be allowed to inspect, monitor, or otherwise evaluate the work being performed and to the extent that such access will not reasonably interfere or jeopardize the safety or operation of the systems or facilities. Contractor must provide all reasonable facilities and assistance for the State's representatives.

(b) Examination of Records. Contractor agrees that the State, including its duly authorized representatives, until the expiration of seven (7) years following the creation of the material (collectively, the "Audit Period"), shall, upon 20 days prior written notice, have access to and the right to examine and copy any of Contractor's books, records, documents and papers pertinent to establishing Contractor's compliance with the Contract and with applicable laws and rules, including the State's procurement rules, regulations and procedures, and actual performance of the Contract for the purpose of conducting an audit, examination, excerpt and/or transcription but the State shall not have access to any information deemed confidential to Contractor to the extent such access would require such confidential information to become publicly available.



This provision also applies to the books, records, accounts, documents and papers, in print or electronic form, of any parent, affiliated or subsidiary organization of Contractor, or any Subcontractor of Contractor performing services in connection with the Contract.

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

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

2.112 Errors

(a) If the audit demonstrates any errors in the statements provided to the State, then the amount in error shall be reflected as a credit or debit on the next invoice and in subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried for more than four (4) quarterly statements. If a balance remains after four (4) quarterly statements, then the remaining amount will be due as a payment or refund within 45 days of the last quarterly statement that the balance appeared on or termination of the contract, whichever is earlier.

(b) In addition to other available remedies, the difference between the payment received and the correct payment amount is greater than 10%, then the Contractor shall pay all of the reasonable costs of the audit.

2.120 State Responsibilities

2.121 State Performance Obligations

(a) **Equipment and Other Resources.** To facilitate Contractor's performance of the Services/Deliverables, the State shall provide to Contractor such equipment and resources as identified in the Statements of Work or other Contract Exhibits as items to be provided by the State.

(b) **Facilities.** The State shall designate space as long as it is available and as provided in the Statement of Work, to house Contractor's personnel whom the parties agree will perform the Services/Deliverables at State facilities (collectively, the "State Facilities"). Contractor shall have reasonable access to, and unless agreed otherwise by the parties in writing shall observe and comply with all rules and regulations relating to, each of the State Facilities (including hours of operation) used by Contractor in the course of providing the Services. Contractor agrees that it will not, without the prior written consent of the State, use any State Facilities or access any State information systems provided for Contractor's use, or to which Contractor otherwise gains access in the course of performing the Services, for any purpose other than providing the Services to the State.

(c) **Return.** Contractor shall be responsible for returning to the State any State-furnished equipment, facilities and other resources when no longer required for the Contract in the same condition as when provided by the State, reasonable wear and tear excepted.

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



2.130 Security

2.131 Background Checks

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

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

2.140 Reserved

2.150 Confidentiality

2.151 Freedom of Information

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

2.152 Confidentiality

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

2.153 Protection of Confidential Information

The State and Contractor will each use at least the same degree of care to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication or dissemination of its own confidential information of like character, but in no event less than reasonable care. Neither Contractor nor the State will (i) make any use of the Confidential Information of the other except as contemplated by this Contract, (ii) acquire any right in or assert any lien against the Confidential Information of the other, or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information to the other party.



Each party will limit disclosure of the other party's Confidential Information to employees and Subcontractors who must have access in order to fulfill the purposes of this Contract. Disclosure to, and use by, a Subcontractor is permissible where (A) use of a Subcontractor is authorized under this Contract, (B) such disclosure is necessary or otherwise naturally occurs in connection with work that is within such Subcontractor's scope of responsibility, and (C) Contractor obligates the Subcontractor in a written Contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor and of any Subcontractor having access or continued access to the State's Confidential Information may be required to execute an acknowledgment that the employee has been advised of Contractor's and the Subcontractor's obligations under this Section and of the employee's obligation to Contractor or Subcontractor, as the case may be, to protect such Confidential Information from unauthorized use or disclosure.

2.154 Exclusions

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

2.155 No Implied Rights

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

2.156 Remedies

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

2.157 Security Breach Notification

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

2.158 Survival

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

**2.159 Destruction of Confidential Information**

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

2.160 Proprietary Rights**2.161 Ownership/Cross-License - Reserved****2.162 Source Code Escrow – Reserved****2.163 Rights in Data**

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

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

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. The Contractor shall retain title to all its patents, copyrights, trademarks, trade secrets, software, and other intellectual property used by the Contractor in performance of this Contract.

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

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



2.170 Warranties And Representations

2.171 Warranties and Representations

The Contractor represents and warrants:

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

(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.

2.172 Software Warranties - Reserved

2.173 Equipment Warranty - Reserved

2.174 Physical Media Warranty – Reserved

2.175 DISCLAIMER

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

2.176 Consequences For Breach

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

2.180 Insurance

2.181 Liability Insurance

(a) Liability Insurance

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

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

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

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



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

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

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

Before the Contract is signed by both parties or before the purchase order is issued by the State, the Contractor must furnish to the Director of Purchasing Operations, certificate(s) of insurance verifying insurance coverage ("Certificates"). The Certificate must be on the standard "accord" form or equivalent. **THE CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING.** All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) shall contain a provision indicating that coverages afforded under the policies WILL NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED without 30 days prior written notice, except for 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

- (b) Subcontractors

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

- (c) Certificates of Insurance and Other Requirements

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

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

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

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

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

2.202 Excusable Failure

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



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

If any of the above-enumerated circumstances substantially prevent, hinder, or delay Contractor's performance of the Services/provision of Deliverables for more than ten (10) Business Days, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State in its reasonable discretion, then at the State's option: (a) the State may procure the affected Services/Deliverables from an alternate source, and the State shall not be liable for payment for the unperformed Services/ Deliverables not provided under the Contract for so long as the delay in performance shall continue; (b) the State may terminate any portion of the Contract so affected and the charges payable there under shall be equitably adjusted to reflect those Services/Deliverables terminated; or (c) the State may terminate the affected Statement of Work without liability to Contractor as of a date specified by the State in a written notice of termination to Contractor, except to the extent that the State shall pay for Services/Deliverables provided through the date of termination. Contractor will not have the right to any additional payments from the State as a result of any Excusable Failure occurrence or to payments for Services not rendered/Deliverables not provided as a result of the Excusable Failure condition. Defaults or delays in performance by Contractor which are caused by acts or omissions of its Subcontractors will not relieve Contractor of its obligations under the Contract except to the extent that a Subcontractor is itself subject to an Excusable Failure condition described above and Contractor cannot reasonably circumvent the effect of the Subcontractor's default or delay in performance through the use of alternate sources, workaround plans or other means.

2.203 Disaster Recovery

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

2.210 Termination/Cancellation by the State

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

2.211 Termination for Cause

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

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

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



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

2.212 Termination for Convenience

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

2.213 Non-Appropriation

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

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

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

2.214 Criminal Conviction

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

**2.215 Approvals Rescinded**

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

2.216 Rights and Obligations Upon Termination

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

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

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

2.217 Reservation of Rights

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

2.218 Contractor Transition Responsibilities

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

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



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

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

(e) Payment - If the transition results from a termination for any reason, reimbursement shall be governed by the termination provisions of this Contract. If the transition results from expiration, the Contractor will be reimbursed for all reasonable transition costs (i.e. costs incurred within the agreed period after contract expiration that result from transition operations). 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 90 calendar days after the stop work order is delivered to Contractor, and for any further period to which the parties may agree. The stop work order shall be specifically identified as such and shall indicate that it is issued under this **Section 2.230**. Upon receipt of the stop work order, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of the stop work order, the State shall either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order as provided in **Section 2.210**.



2.232 Cancellation or Expiration of Stop Work Order

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

2.233 Allowance of Contractor Costs

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

2.240 Reserved

2.250 Dispute Resolution

2.251 In General

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

2.252 Informal Dispute Resolution

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

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

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

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

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



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

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

2.253 Injunctive Relief

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

2.254 Continued Performance

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

2.260 Federal and State Contract Requirements

2.261 Nondiscrimination

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

2.262 Unfair Labor Practices

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

2.263 Workplace Safety and Discriminatory Harassment

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

2.270 *Litigation***2.271 Disclosure of Litigation**

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

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

(i) the ability of Contractor (or a Subcontractor hereunder) to continue to perform this Contract in accordance with its terms and conditions, or

(ii) whether Contractor (or a Subcontractor hereunder) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in such Proceeding, which conduct would constitute a breach of this Contract or a violation of Michigan law, regulations or public policy, then Contractor shall be required to provide the State all reasonable assurances requested by the State to demonstrate that:

(A) Contractor and/or its Subcontractors hereunder will be able to continue to perform this Contract and any Statements of Work in accordance with its terms and conditions, and

(B) Contractor and/or its Subcontractors hereunder have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in such Proceeding.

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

(1) Within 30 days of Contractor becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor shall notify the Office of Purchasing Operations.

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

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

2.272 Governing Law

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

2.273 Compliance with Laws

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

**2.274 Jurisdiction**

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

2.280 Environmental Provision**2.281 Environmental Provision - Reserved**2.290 General**2.291 Amendments**

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

2.292 Assignment

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

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

2.293 Entire Contract; Order of Precedence

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

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

2.294 Headings

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

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

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

2.296 Notices

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

State:

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

Contractor(s):

Name: Lynden Lyman
Address: 260 Franklin St., 11th Floor
Boston, MA 02110

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

(b) Binding Commitments

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

2.297 Media Releases and Contract Distribution

(a) Media Releases

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

(b) Contract Distribution

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

2.298 Reformation and Severability

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

**2.299 Consents and Approvals**

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

2.300 No Waiver of Default

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

2.301 Survival

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

2.302 Covenant of Good Faith

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

2.303 Permits

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

2.304 Website Incorporation

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

2.305 Taxes

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

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

2.306 Prevailing Wage - Reserved**2.307 Call Center Disclosure**

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

**2.308 Future Bidding Preclusion**

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

2.310 Reserved2.320 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 Reserved2.330 Federal Grant Requirements**2.331 Reserved**