

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

October 27, 2009

CHAGNE NOTICE NO. 1
OF
CONTRACT NO. 071B7200242
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR Tichenor & Associates, LLP 2000 Town Center, Suite 1900 Southfield, MI 48075 wtichenor@tichenorassociates.com	TELEPHONE (248) 351-2663 William Tichenor
	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: March 27, 2007 To: March 26, 2010	
TERMS N/A	SHIPMENT N/A
F.O.B. N/A	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A	

NATURE OF CHANGE(S):

Effective immediately, all Contingency Fees are reduced by 10%.

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

AUTHORITY/REASON:

Per vendor agreement and DMB/Purchasing Operations' approval.

CURRENT AUTHORIZED SPEND LIMIT REMAINS: \$500,000.00

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DEPARTMENT OF MANAGEMENT AND BUDGET
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April 27, 2007

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The terms and conditions of this Contract are those of **ITB #071I6200376**. 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: **\$500,000.00**

Date _____

**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.

This Contract will be 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:

1. 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:

Using Tichenor's experience in performing successful audits of holders of unclaimed property in Michigan and West Virginia, Tichenor will select the best potential audit targets. Tichenor will search commercial databases containing public records to assist in identification of audit targets.

Once an audit selection is approved by the Unclaimed Property Division ("UPD") Contract Compliance Inspector, Tichenor will immediately begin the process of auditing, identifying and delivering unclaimed property to the UPD from holders subject to the Michigan Uniform Unclaimed Property Act (the "Act"), provided that the holders are incorporated in or have significant business operations in the state of Michigan. The following procedures will be used to complete this task:

INITIAL DEMOGRAPHIC OR ON-SITE REVIEW

AUDIT PROCEDURES

INITIAL REVIEW:

In the initial review, the manager or supervisor will determine the following:

- The holder's state and date of incorporation
- Whether the corporation has ever changed its state of incorporation. If so, we will obtain details.
- Method of filing reports – e.g., consolidated, by division.
- The holder's history of reporting unclaimed property, including the amount and types of property reported.

Based upon the type of organization being audited, the manager/supervisor will prepare a list of potential types of unclaimed property that could be expected for the type of business being audited.

The manager/supervisor will note any areas of potential unclaimed property not appearing on the reports submitted by the holder as well as any inconsistencies in the reporting by the holder.

The manager/supervisor will then discuss these potential areas of focus with the Partner.

OPENING CONFERENCE:

- Opening Conference: Prior to the opening conference, the auditor must provide the holder with an approved confidentiality agreement and a copy of the UPD's audit guidelines.
- Identify the audit period to be covered and the method to be employed, including sampling and estimation
- Explain any unique aspect of Michigan's Unclaimed Property Law as compared to other states.
- Provide holder with name, title, address, telephone number, and facsimile number of the UPD's examination liaison.
- Identify in writing all individuals who will participate in the examination.
- Explain that the holder shall remit any abandoned property identified during the examination to our firm (the contractor) and that our firm will remit the property to the UPD.
- Explain to the holder their appeal rights.
- Inform the holder of the provision of the Michigan Unclaimed Property Law regarding the holder's duties to notify owners of unclaimed property.
- Advise the holder of their continuing duty to report unclaimed property and that property remitted must conform to the statute.
- Inform the holder that our firm is paid on a contingent fee basis.



When the manager/supervisor makes contact with the holder, he or she will attempt to determine the following: (Follow up with a written request)

- What is the name and title of the officer responsible for compliance with the unclaimed property statute?
- What is the name and title of the individual responsible for filing unclaimed property reports?
- Are file copies of reports and related working papers maintained by the holder and currently available? If yes, where are they located and who has custody?
- Are reporting procedures or policies relating to unclaimed property documented in procedure or policy manuals? If yes, obtain a copy.
- Does the holder use the criteria established by the U.S. Supreme Court in *Texas v. New Jersey*, 85 S.Ct. 1136 (1965) when reporting to the states? If not, what are the variances and reasons?
- Does the holder consider any category or type of property exempt from the unclaimed property reporting requirements that is at variance with the auditor's understanding of the law? If yes, obtain details and legal position.
- Have any policies relating to unclaimed property or services thereon been adopted by a formal resolution of the Board of Directors or a committee thereof? If yes, obtain a copy.
- Is the holder relying on an opinion from legal counsel regarding its reporting responsibilities under the unclaimed property law of this state or any other states? If yes, obtain a copy.

The chart of accounts will be reviewed for suspect accounts that may indicate the presence of unreported unclaimed property. The manager/supervisor will discuss his/her findings with the Partner.

EXAMINATION PROGRAM FOR RECENT PERIOD:

In devising the audit program for a recent period, Tichenor will utilize the particular work programs designed for the various types of property involved. The following steps will be taken in the examination program for the recent period:

- Discuss the unclaimed property reporting procedures with the individual responsible for reporting unclaimed property. In particular, we will inquire about types of unclaimed property that we would expect to find at this type of holder that have not appeared on their unclaimed property reports.
- Discuss the unclaimed property reporting procedures with the individual responsible for preparing the unclaimed property reports. In particular, we will inquire about types of unclaimed property that we would expect to find at this type of holder that have not appeared on their unclaimed property reports. If this individual is not the same as the individual responsible for reporting unclaimed property, we will attempt to discuss these matters separately with each individual.
- We will ask that an individual who is responsible for gathering the information for unclaimed property demonstrate their process for each type of property. If inconsistencies between policies and actions taken by the holder's staff are identified, we will make the following inquiries:



- Does the accounting staff responsible for identifying and collecting data related to unclaimed property have a proper understanding of unclaimed property procedures?
- Are they following the procedures?
- Are the procedures adequate for identifying and reporting unclaimed property?

Upon completion of the audit for the recent period we will then determine revisions necessary to audit the entire period.

After the initial testing of the recent period, the partner and the manager/supervisor will determine the potential for recovery and propose a budget to the UPD for the entire period.

CONDUCT AUDIT FOR THE ENTIRE PERIOD:

After the audit of the initial period and the revisions to the audit work program based on the audit of the initial period, an audit for the entire period will be conducted.

Tichenor will compute the amount due from the holder, hold an exit conference, and collect in accordance with the audit guidelines.

WORK PLAN EXAMPLES:

The following are work plan sections dealing with various types of holders of unclaimed property. They are:

- Outstanding checks: This could pertain to any type of outstanding check. This would include accounts payable, payroll, and client refunds.
- Property and Casualty Insurance. Claim checks and drafts.
- Mineral interests. (Royalties)
- Deposits held by banking organizations. This would include checking accounts, savings accounts and CD's.
- Unidentified deposits/remittances. Traveler's checks and money orders
- Safe Deposit and Safekeeping.
- Credit Balances
- Collateral.
- Employee benefit trust distribution (Pensions)
- Personal trust property
- Corporate trust property
- Equity and debt
- Credit memoranda/Gift certificates
- Life insurance death claims.
- Matured endowments, policies reaching age limit and other maturities due and payable.
- Court deposits/Law enforcement/Utility deposits.



Many of the following steps are geared toward a review of hard copy (paper records). When feasible, the auditor should obtain copies of the holder's computer files and use data extraction software to select the data to review. This may require the auditor (in consultation with the manager/partner) to modify the audit program based upon the type of records available.

OUTSTANDING CHECKS

For ease of tracking, the five-year abandonment period for an outstanding check is normally measured from the issue date. However, the auditor must determine the materiality of any period of time that may have passed between the date the obligation was originally payable and the actual issuance of the check. Checks are sometimes reissued with new dates in effort to avoid unclaimed property reporting.

Some holders will assert that simply printing *VOID AFTER 90 DAYS* or something similar on all their check stock exempts them from unclaimed property reporting. It doesn't. The check itself may be void, but the debt to the payee remains, and it is the money owed that is subsequently reported as unclaimed, not the piece of paper. Other holders may print terms on their check stock which state that the issuer will not honor claims for the funds specified on the check if it is not negotiated within a specified time. When this is found, it may be an example of *private escheat*, which is prohibited.

The following procedures are used in reviewing outstanding checks and drafts at most holders. Separate procedures are used for checks issued by banking organizations.

1. Obtain a list of all open and closed bank accounts.
2. Review the internal control maintained over outstanding checks and any other reconciling items on bank reconciliations.
3. Determine if it is a company policy to write off outstanding checks to income or the expense accounts related to the checks. This applies both to written policies and unwritten policies.
4. Determine what documentation is maintained regarding checks written off to income or written off against the expense accounts related to the check. The holder's staff may actually maintain a list of items which were written off.
5. Review all closed commercial checking accounts to determine the amount of outstanding checks at the time of closing.
6. Review liability accounts to which outstanding checks are transferred:
 - a. Evaluate aging procedures.
 - b. Test debit entries to determine their nature.
 - c. Reconstruct any checks written off to income or retained earnings.
7. Review income accounts to determine if any other checks have been written off.
8. Determine if checks returned by the Post Office (RPO checks) are handled differently from other outstanding checks to avoid misunderstandings and omissions when requesting records.
9. Determine if checks are prepared for payroll, vacation pay, severance pay, retirement and pension plan refunds, etc., belonging to terminated employees for periods subsequent to termination.
10. Review procedure for contacting payees of uncashed checks.

**PROPERTY AND CASUALTY INSURANCE****CLAIM CHECKS AND DRAFTS**

In addition to the above discussion of outstanding checks, property and casualty insurance companies can present additional challenges to the auditor:

First is the question of when the company recognizes a claim as paid for purposes of reporting. Paid claims are considered in establishing premium rates for future periods. If the paid claims reported by the company are based on the total claim drafts issued during the period, it is said to be accounting for them on the *issued* basis. If the company reports only those claim drafts that were actually presented for payment and cleared, it is said to be using the *paid* basis of accounting. The use of the paid basis of accounting for claim payments is no longer common. Still, to avoid reporting claim payments as unclaimed property, some companies attempt to argue that their outstanding claim payments are simply offers of settlement, not liquidated debt, even though they account for these payments on the issued basis for reporting.

The second and most time-consuming challenge for the auditor is that of true offers of settlement commingled with payments for liquidated damages on the insurance company's list of outstanding claim checks or drafts. Upon examination of the related claim files, the auditor may find that offers of settlement continue to be carried on the list of outstanding claim payments long after subsequent settlements have been made and replacement checks or drafts have been issued and cleared.

Audit Steps:

1. Review policy provisions relating to the payment of claim benefits.
2. Obtain a list of all open and closed bank accounts.
3. Evaluate the system of internal control over all cash disbursements.
 - a. Determine if drafts are accounted for on the *issued* or *paid* basis.
 - b. Determine if payments of fixed and certain nature can be differentiated from offers of settlement.
 - (1) Do drafts have release terms on them?
 - (2) Are separate release agreements used?
4. Review the internal control maintained over outstanding checks/drafts and other reconciling items on bank reconciliations.
5. Review all closed commercial checking accounts to determine the amount of outstanding checks/drafts at the time of closing.
6. Review liability accounts to which outstanding checks/drafts are transferred:
 - a. Evaluate aging procedures.
 - b. Test debit entries to determine their nature.



c. Reconstruct any checks/drafts written off to income or retained earnings. Review income accounts to determine if any other checks have been written off.

7. Review the contra or related expense accounts to determine if outstanding checks/ drafts are reversed to the account for which they were drawn.
8. Determine if checks returned by the Post Office (RPO checks) are handled differently from other outstanding checks.
9. Determine if checks are prepared for payroll, vacation pay, severance pay, retirement and pension plan refunds, etc., belonging to terminated employees for periods subsequent to termination.
10. Ascertain if sales commissions are always paid by check.
11. If drafts are/were accounted for on paid basis:

a. Review past and/or present internal control specifications to determine if reports of unrepresented drafts are generated.

- (1) Are listings of unrepresented drafts prepared?
- (2) Are copies of unrepresented drafts retained?
- (3) If no other information is available, develop a nonpresentment rate by comparing with periods for which information is available.

b. For insurance claim payments, analyze claim files to determine if:

- (1) Claim files and unrepresented draft reports agree.
- (2) The unrepresented draft report includes offers of settlement.

12. Review procedure for contacting payees of uncashed checks and drafts.
13. Determine if RPO checks/drafts are canceled and posted to another account or accounted for separately.
14. Analyze income or surplus accounts to determine if any payments have been written off.

**MINERAL INTERESTS (Royalties)**

Oil and gas companies hold royalties in suspense for many good and sufficient reasons, such as title disputes, clouded titles, or unpaid amounts due from the royalty owner on other business. Royalty suspense ledgers are a necessary part of the accounting system and here, as elsewhere, unclaimed property appears as an exception to the normal flow of business.

In addition to royalties payable from a company's own production, unclaimed royalty payments are also acquired through the buying of leases from other oil and gas companies. The abandonment periods for these suspended royalties should be calculated from their original payment dates, not the date received by the acquiring company.

Audit Steps:

1. Review the internal control maintained over the mineral interest suspense account.
2. Request a detailed printout of the suspense ledger used in preparing unclaimed property reports.
 - a. Review the suspense ledger for accounts reported and those not reported.
 - b. Schedule the significant accounts not reported and obtain documentation as to why they were not reported.
 - c. Review owners previously reported and test to determine if all money owed to those owners has been remitted to the State.
 - d. Review owners not reported and test the dates of production for reliability.
3. Obtain reports filed with other states and determine if:
 - a. Property, with associated owner addresses, is reported to the state of last known address or state of production.
 - b. Property, without associated owner addresses, is reported to the state of incorporation or state of production.
4. Determine if the production cutoff dates conform to reporting requirements.
5. Determine if the holder has removed owners from suspense for reasons other than payment to the owners:
 - a. Inactive accounts purged from the system.
 - b. Old dates of production transferred out of system.
 - c. Wells plugged and abandoned.
 - d. Sale of the leases.



- e. Change in the EDP system.
- f. Write-offs to income, other revenue, etc., for any other reason.

- 6. Determine if leases that have been sold have documentation to provide the terms of the contract as they apply to the liability suspense.
- 7. Determine if any mergers/acquisitions with other producers have taken place.

- a. Obtain information as to the disposition of the previous company's suspense system.
- b. Were there any suspense funds not converted into the surviving suspense system? (If so, obtain details.)

- 8. Determine if RPO checks generate a transfer of the owner's underlying interest from pay status to suspense.
- 9. Determine if original production dates are retained in suspense ledger when interests are transferred as a result of outstanding or RPO checks.
- 10. Inspect outstanding check lists for recurring names. Determine if these are being transferred to suspense.

DEPOSITS HELD BY BANKING ORGANIZATIONS

Contact between the holder and the assumed owner resets the clock for purposes of abandoned property. Positive, documented contact between the holder and the owner is required for keeping an account in active status. Change of address notifications, payments on loans, activity in other accounts belonging to the same owner, are all valid contact. However, the auditor must test for what else updates the last contact field in the holder's system. Examples of invalid updates to a depositor account's last contact date include automatic deductions of safe deposit box rental, automatic deposits of interest from one account into another, statement mailings and internally-generated file maintenance.

Special rule for certificates of deposit (CDs): The abandonment period begins to run on the maturity date. In the case of automatically-renewable CDs, the first maturity date is used.

When examining this type of property:

- 1. Obtain a list of the categories of deposits offered by the organization.
- 2. Review the system of internal control over the deposit accounting system.
- 3. Evaluate the controls placed over inactive accounts.
- 4. Test system as documented above:
 - a. Trace accounts from active files to dormant control.
 - b. Trace accounts from dormant control to active files.



- c. Trace accounts reported to State:
 - (1) Identify all unlawful service charges taken.
 - (2) Compute interest not accrued and credited to the accounts.
- d. Review automatically-renewable certificates of deposit for customer-generated activity.
- 5. Reconstruct accounts service charged off prior to becoming reportable:
 - a. Add back all unlawful service charges taken.
 - b. Compute interest from date interest no longer accrued to nearest preceding month as of the examination.

UNIDENTIFIED DEPOSITS/REMITTANCES

Banks, savings associations, and credit unions will typically hold unidentified deposits in a demand deposit account under that name, *Unidentified Deposits*. With on-line computer terminals at every teller station, unidentified deposits occur less often than in the past because tellers attempt to post deposits with customers still at the window. Most unidentified deposits now result from nighttime and mail deposits with incorrect or missing deposit slips.

Other companies with large volumes of direct billing to customers also receive unidentified remittances. Insurance companies, utility companies, and hospitals occasionally receive payments by mail from people who intend to pay someone else's bill or send their payment to the wrong company. Posting to the correct account is delayed, or sometimes not possible, when the party making the payment doesn't include a payment voucher from the bill, doesn't include an account number with the payment, has an incorrect address on their check, or pays with a money order containing no address. Until the true owner is identified, or the funds are written off to income, unidentified remittances are often held in liability accounts with titles such as *Unidentified Remittances*, *Unapplied Payments*, or *Unapplied Cash*.

Unidentified deposits and remittances are usually a small part of an auditor's findings but, despite the holders' best efforts to prevent them; they continue to occur when the holder has a large volume of transactions with the general public.

Steps to be followed include:

- 1. Review the internal control over unidentified deposits and remittances.
- 2. Review the accounting procedure on unidentified deposits and remittances.
- 3. Analyze suspense and liability accounts utilized for all unidentified payments received.
- 4. Analyze aging procedure on the transferal of unidentified payments.
- 5. Determine the ultimate disposition of uncleared unidentified items.
- 6. Analyze all amounts taken into income or surplus.
- 7. Sample suspense accounts and liability accounts used for recording and controlling unidentified items.

**CHECKS ISSUED BY BANKING ORGANIZATIONS**

For the purposes of this section, the terms bank and banking organization should be considered to include savings associations and credit unions as well.

The most common reason for checks to go unreported is that they are simply overlooked. Many banking organizations have multiple series of cashier's checks and the inadvertent omission of a single series is not uncommon. Writing them off to income is less common, but has been discovered by auditors in past.

Audit Steps to perform:

1. Obtain a list of all instruments issued by the bank.
2. Evaluate and document the system of internal control over outstanding bank checks.
3. Review aging process.
4. Test system as documented above as follows:
 - a. Trace items from issuance register to outstanding control.
 - b. Trace items from outstanding control to issuance register.
 - c. Trace items reported to State.
 - (1) Agree issue dates, issue amounts and names.
 - (2) Add back all service charges taken.
5. Reconstruct bank checks charged off prior to becoming reportable.
 - a. Add back all charge off.
 - (1) From actual records.
 - (2) From projections, if necessary.

The owner of a check is the payee. Occasionally, banks will mistakenly not report cashier's checks because they know the whereabouts of the purchaser but, unless it is positively known that the purchaser is still holding the original copy of the check, contact with the purchaser is irrelevant.

**TRAVELER'S CHECKS AND MONEY ORDERS**

Both traveler's checks and money orders are reportable to the state in which they were purchased. This is an exception to the general rule that property is to be reported to the holder's state of incorporation when there is no last known address for the owner. Money orders issued by non-financed institutions have a seven year abandonment period. Those issued by financial institutions have a seven year period.

While the 15-year abandonment period for traveler's checks may seem excessively long, the reason for it lies in the many unused checks that remain in the purchasers' possession in anticipation of future vacations. This is supported by the large volume of claims for reimbursement received by states from the issuers after the holders have honored these 15+ year-old traveler's checks. The purchasers do still use them after all that time.

The auditor may follow the same procedures as listed above for checks issued by banking institutions. Banks and small money order companies have been found to write money orders off to income in the past.

SAFE DEPOSIT AND SAFEKEEPING

Both these property types, found at banking organizations, will require a trip to the vault for the auditor.

For safe deposit boxes, the five-year abandonment period begins to run on the date the last rental payment expired.

Steps to be followed include:

1. Evaluate the system of internal control over safe deposit boxes on which rent is due and unpaid.
 - a. Document system.
 - b. Review controls over signature cards and entry cards.
 - c. Examine contents of forced boxes.
 - d. Trace items reported to inventories of forced safe deposit boxes.
2. Evaluate the system of handling safekeeping items.
 - a. Document system.
 - b. Examine safekeeping register:
 - (1) Prepare a schedule of unreported items.
 - (2) Note items appearing on register not accounted for in safekeeping.

**CREDIT BALANCES**

Unclaimed property found in credit balances is not always found in accounts payable. Patient accounts receivable at hospitals and customer accounts receivable at credit card and utility companies are good examples of the types of holders who, by the nature of their business, have relatively large volumes of accounts receivable credit balances. When checks are not routinely issued to the owners for these balances, the auditor will often find that these balances are absorbed into income before the running of the five-year abandonment period and not reported as unclaimed property.

Steps to be followed include:

1. Obtain a list of categories of credit balances generated by the holder.
2. Evaluate and document the systems and procedures for processing credit balances.
3. Review a listing of credit balances.
 - a. Evaluate aging procedures.
 - b. Determine if balances of less than \$1.00 are refunded.
 - c. Determine amounts that are reportable.
 - d. Test debit entries to determine their nature.
 - e. Reconstruct any items written off to an income or related expense account.
4. Analyze income accounts to determine whether credit balances have been taken into income. Also, review related expense accounts to determine whether credit balances are used to offset expenses/bad debts.
5. If holder is a retail company, determine if holder entered into a consent decree with FTC. If so,
 - a. Obtain information provided to FTC.
 - b. Ascertain what periods were included in the consent decree and whether balances unclaimed under the decree have been reported.
 - c. Examine for pre-decree balances.

Among other things, the Federal Trade Commission's (FTC) Regulation Z prescribes customer-notification requirements for credit balances of \$1.00 or more held by credit card companies. Since Regulation Z is silent as to the disposition of credit balances under \$1.00, some credit card issuers incorrectly refer to it as their authority to absorb these small credit balances. They often do so by programming their computers to net credit balances of less than \$1 against debit balances of less than \$1. The net figure is then used in the general journal entry to write off these small balances. However, there is no minimum value to be met on any type of unclaimed property subject to reporting.

**COLLATERAL**

Collateral has a five-year abandonment period, measured from the date the associated loan was paid off. Of course, the same criteria regarding subsequent contact with the owner still applies, as it does with any type of property. The auditor should check the lender's central information files for current contact with the borrower before assuming that collateral being held for long periods is unclaimed.

In anticipation of future loans, particularly in the case of commercial loans, certificates for pledged stocks and bonds are often intentionally left with the lender by the borrower after the original loan is paid off. At banking organizations, the Loan Department likely deposited these items with the Safekeeping Department and has copies of the safekeeping receipts on file. Using those receipts makes it easier for the auditor to physically locate collateral. Occasionally, it's found that the Safekeeping Department has a record of collateral being returned to the owner, but the safekeeping receipts were not removed from the Loan Department's files.

Steps to be followed include:

1. Review and document the system of internal control over collateral held.
2. Examine collateral register for aged items:
 - a. Trace collateral to loan files.
 - b. Review central information files.
3. Inspect all collateral held.
 - a. Trace aged items to collateral register for activity.
 - b. Determine the status of collateral being held on fully-paid loans.

EMPLOYEE BENEFIT TRUST DISTRIBUTIONS (Pensions)

Large employers often establish some form of employee benefit/retirement plan. Retired and ex-employees move away, the plan administrator loses contact with them and their benefit distributions remain unclaimed. Often, a bank's trust department is the plan administrator and the auditor will require an introduction from the company before auditing records at the bank.

This is an area of continuing controversy. Employee benefit trusts (EBTs), established under the provisions of the Employee Retirement Income Security Act (ERISA), call for unclaimed distributions to be absorbed back into the trust for the benefit of the remaining members. This contradicts the prohibition against private escheat included in the unclaimed property statutes of many states.

The results of step 1, then, will assist the auditor in deciding whether to continue with the rest of the audit of the employee benefit plan.

Steps to be followed:



1. Determine the legal nature of EBT plans for the treatment of unpaid benefits.
2. Review the internal control over distributions.
3. Review the accounting procedure on distributions.
4. Age all outstanding or unpaid distributions subject to reporting.
5. Analyze liability accounts related to distributions or payments.
6. Trace reported distributions through the holder's system to determine their origin and disposition.
7. Review trust accounts and related declarations of trust.
8. Analyze accounts used in connection with revocable or irrevocable trust deposits. Review trust agreements as deemed necessary.

PERSONAL TRUST PROPERTY

The most frequently occurring form of unclaimed personal trust property is the excess of dividends over what can be allocated to personal trust accounts. This occurs as a result of timing differences between the sale of securities on behalf of one or more trust accounts and the declaration of dividends by the issuer of the securities.

Usually, the issuer's dividend disbursing agent will follow up with a refund request for excess dividends after being contacted by the new owner of the securities, but not always. Some dividend disbursing agents even refuse the trust company's attempts to return unallocable dividends when they haven't heard from the new owners because, left as is, their records balance.

Steps to be followed:

1. Evaluate and document the system of internal control over unclaimed items.
2. Examine dividend and interest clearing accounts:
 - a. Analyze aging procedure.
 - b. Trace items from active accounts to special control accounts.
 - c. Trace items reported to the State.
 - (1) Reconcile dates and amounts.
 - (2) Add back all charges taken and amounts offset improperly.
3. Undeliverable fiduciary checks:
 - d. Analyze controls for outstanding checks and the disposition of same.
 - (1) Prepare a schedule of unreported outstanding checks.
 - (2) Test for write-offs of outstanding checks.
4. Suspense accounts:
 - e. Obtain a list of general ledger suspense accounts.
 - (1) Select accounts for further testing.
 - (2) Evaluate the internal controls over these accounts.



- f. Test claims:
 - (1) Trace items reactivated from suspense accounts.
 - (2) Test for write-offs of suspense account items.
 - (3) Trace items reported to the State.
 - (a) Add back all charges taken.
 - (b) Reconstruct amounts offset to unrelated debit items.
- g. Reconstruct amounts improperly charged off or taken into fees prior to becoming reportable.
- 5. Analyze controls for uncleared unallocable dividends and the disposition of same.
- 6. Analyze suspense stock and bond positions for unclaimed stock, dividends, and interest that cannot be allocated to individual trust accounts.
- 7. Test for the sale of suspense stock certificates and the ultimate disposition of the proceeds.

CORPORATE TRUST PROPERTY

Coupon-Bond Paying Agent

The bond-paying agency of a bank's corporate trust department is frequently out of balance in many of its client accounts when the bonds are bearer instruments. Bond issuers transfer funds to the paying agent at each coupon maturity date to cover that period's interest payments. Though some commingling of funds may occasionally be found, the common procedure is for the agency to deposit the funds to the appropriate demand deposit account (DDA) set up for each specific bond series. Bond and coupon redemptions are then paid directly from those accounts.

Some bond paying agents have such tight controls on these DDAs that they are able to report exactly which coupons from which numbered bonds remain outstanding. However, the many similar names of the different bond series increase the chances for clerical errors when interest coupons are received for payment. Coupons from one series of bonds are redeemed with funds received for another series and, within a few years, the accounts can be hopelessly out of balance.

Steps to be followed:

- 1. Evaluate and document the procedures for processing of undeliverable and outstanding interest payments.
- 2. Review document files for debt accounts and obtain copies of pertinent sections of the indenture agreements instructing the trustee.
- 3. Evaluate the internal control over undeliverable property.
- 4. Test currently open and closed principal and interest control accounts for:
 - a. Unreported property.
 - b. Property service charged or charged off.
- 5. Test transaction journals for questionable entries for: (Redemption accounts, debt maturity accounts for both principal and interest.)



- c. Service charging.
- d. Charge-offs.
- e. Fees being charged.
- f. Offsetting to recoveries accounts.
- g. Return of funds to principal.
- h. Accounting offset of unrelated property.

Dividend Disbursing Agent

Even when the actual certificates are presumed to be in the possession of the missing owner, stock shares must be reported as abandoned if:

- All distributions have remained unclaimed, **or** mail addressed to the owner has been returned as undeliverable, for at least three years,
- The owner has not communicated with the holder, in writing or otherwise, within the past three years, and
- The location of the owner is unknown.

When reported, these are identified as *underlying shares*. Please note, the **only** time mail not returned by the Post Office prevents the assumption of abandonment is when there have been no distributions during the previous three-year period.

1. Document the system of internal control over the issuance of cash dividends.
 - a. Obtain a listing of cash dividend bank accounts.
 - b. Obtain oral evidence as necessary to supplement the working papers.
2. Evaluate and document the system used for the processing of undeliverable or uncashed cash dividends.
3. Evaluate the internal control over undeliverable or uncashed cash dividends.
4. Test transaction journals for questionable entries.
5. Determine if underlying shares are subject to reporting.

Stock Transfer Agent/Exchange Agent

1. Document the system of internal control over the issuance of stock dividends and fractional-share payments.
2. Document the internal control over undeliverable stock dividends and fractional-share payments.
3. Evaluate and document the system used for the processing of undeliverable stock dividends.
4. Test transaction journals for questionable entries.
5. Age undelivered stock dividend records and determine if unreported dividends and fractional-share payments exist.
6. Evaluate the internal control over unexchanged stock and fractional-share payments.
7. Evaluate and document the system used in accounting for unexchanged stock.
8. Test transaction journals for questionable entries.
9. Age unexchanged stock records and determine if unreported stock and fractional-share payments exist.
10. Determine if underlying shares are subject to reporting.



Receiverships

1. Obtain a list of liquidated corporations for which the holder has been appointed a receiver.
2. Evaluate the internal control over unclaimed distributions.
3. Test transaction journals for questionable entries.
4. Age liquidation distribution records and determine if any unclaimed distributions are subject to reporting.

EQUITY AND DEBT

The auditor may find the required records at the holder's office, but frequently this function is contracted out to one or more agents.

Steps to be followed:

1. Research outside sources such as Capital Clearinghouse (CCH) Changes Reports prior to commencing the examination. Analyze the history of holder, i.e., classes of stock outstanding, stock splits, stock dividends, mergers, acquisitions, spin-offs, etc.
2. Prepare a list of all merged or acquired companies where acquisition was made in a stock-for-stock deal.

Determine:

- a. The date of merger or acquisition.
- b. The exchange ratio.
- c. If there was cash in lieu of fractional shares or liquidating distribution rates.
- d. If the merged company was a public company.
- e. The merged company's predecessor transfer agent.
- f. The merged company's dividend history.
- g. The disposition of unclaimed dividends subsequent to merger.
3. Obtain a list of matured or called debt (bonds, debentures, or notes) for the holder and/or merged companies.
4. Determine if the merged company filed reports with the State. Obtain and review copies of these reports for any previously reported property.
5. Request an introductory phone call or letter from the holder to review the accounting records of the outside agent, if necessary.
6. Request a copy of written procedures used to handle and account for unclaimed equity and debt.
 - a. Evaluate and document the adequacy and utilization of the above procedures.
 - b. Evaluate the internal control over reportable property.
7. Determine if the aging of items is proper.
8. Reconstruct charges on any items or items charged off completely.
9. Trace items previously reported to the State to source records and note exceptions.
10. Obtain oral evidence as considered necessary to supplement the working papers.
11. Determine if authorization has been given by the holder to an agent to report unclaimed property to selected states.

**Shareholder Equity**

1. Obtain any legal opinions relating to the reporting of stock, dividends, underlying shares, etc.
2. Evaluate the system of internal control over records of inactive shareholders.
3. Analyze the procedures used to identify and report underlying shares and/or lost shareholders.
4. Obtain copies of agency contracts relating to applicable mergers, acquisitions and liquidations.
5. Evaluate and document the carrying forward of potential unclaimed property from prior transfer or paying agents and the ultimate disposition of same.
6. Determine the disposition of potential unclaimed property held for or by subsidiaries of the holder by prior agents.

Cash and Stock Dividends

1. Document the system of internal control over the issuance of cash and stock dividends.
 - a. Obtain a listing of cash dividend bank accounts.
 - b. Age check registers and determines if unreported dividends exist.
2. Evaluate procedures used to report outstanding dividend checks.
 - a. Reconstruct any dividends charged off.
 - b. Obtain oral evidence as necessary to supplement the working papers.
3. Evaluate and document the system used for the processing of undeliverable cash and stock dividends.
4. Evaluate the internal control over undeliverable cash and stock dividends.
5. Test transaction journals for questionable entries.
6. Determine if underlying shares are subject to reporting.

Unexchanged Stock

1. Evaluate and document the system used in accounting for unexchanged stock.
2. Evaluate the internal control over unexchanged stock and fractional-share payments.
3. Age unexchanged stock records and determine if unreported stock and fractional-share payments exist.
4. Test transaction journals for questionable entries.
5. Determine if underlying shares are subject to reporting.

Principal and Interest on Debt Issues

1. Account for debt redemptions, maturities, and the disbursement of interest payments for registered and bearer debt instruments. (Until the early 1960s most debt securities were issued in bearer form.)
 - a. Evaluate and document the system of internal control and procedures for the processing of undeliverable and outstanding interest payments.
 - b. Review pertinent sections of the bond indenture agreements requiring the trustee to return outstanding and undeliverable interest checks or proceeds from unrepresented coupons or uncashed checks to the holder after a stipulated period.



- c. Review registration requirements of each security.
- d. Review currently open and closed principal and interest control accounts for:
 - (1) Unreported property.
 - (2) Property service charged or charged off.
- e. Test transaction journals relating to principal redemption or interest payments for questionable entries: (Redemption accounts and debt maturity accounts for both principal and interest.)
 - (1) Service charging or other fees.
 - (2) Charge offs.
 - (3) Offsetting to unrelated accounts.
 - (4) Return of funds to principal. Requires a separate follow-up.

CREDIT MEMORANDA, GIFT OR MERCHANDISE CERTIFICATES, SCRIP OR INSTRUMENTS

REPRESENTING CASH

Gift certificates that are redeemable for merchandise or services are considered to be abandoned at the price paid by the purchaser for the gift certificate.

- 1. Determine if last known address of purchaser can be obtained, e.g., credit records, original issuance records, etc.
- 2. Determine if the accounting system permits aging of outstanding instruments. If not, use estimating procedures.
- 3. Analyze selected accounts to determine whether any outstanding credit memos have been taken directly into income or credited to an expense account.
- 4. For gift certificates, if these are not segregated in liability or reserve accounts, review tax returns to determine the amount unrepresented and reported to the IRS as income. The holder may have reported the amounts in the taxable year following receipt, in accordance with U.S. Treasury Regulation 1.451-5.

LIFE INSURANCE DEATH CLAIMS

The auditor will often find that the reasons some death claim payments are still unpaid years after the date of death relate to disputes between the heirs. Questionable circumstances surrounding the death of the insured, such as the beneficiary's contribution toward bringing about the death, can also hold up payment.

These are certainly valid reasons for delaying payment, but they cannot be used indefinitely. The auditor's inquiries may bring long-standing unpaid death claims to the attention of the holder, with the only reasonable resolution being to report the benefits for an *unknown* owner.

When examining this type of property:

- 1. Review the internal control over the death claim payment procedure.
- 2. Review the accounting procedures utilized to handle death claims.
- 3. Review the company's follow-up procedure on paying death claims.
- 4. Review the death claims register or listing for any aged items.
- 5. Trace a sample of unclaimed payments to policy files.



6. Analyze all death claims held in suspense or unpaid after a specified cutoff. Interview company attorney regarding disputed death claims.
7. Trace claims reported as unclaimed property through the system to determine their origin and disposition.
8. Analyze all claims taken into income or surplus.

MATURED ENDOWMENTS, POLICIES REACHING LIMITING AGE, AND OTHER MATURITIES DUE OR PAYABLE

People usually know if they have been named as beneficiaries on life insurance policies. In the event they do not, however, they are unable to inform the life insurance company of the insured's death. Without that information, the death benefits are not yet payable, the abandonment period cannot begin to run and, if the company doesn't learn of the insured's death through other means, the abandonment period will not commence until the limiting age specified in the policy is reached.

In the case of annuity payments and other obligations that are conditioned upon the continued life of a person, those payments are not considered to be "due and payable" in the absence of proof that the payee was alive at the time required by the contract. So, while losing contact with a payee often starts the abandonment period for other types of personal property, it will generally, and properly, result in the cessation of payments made pursuant to an annuity contract.

If the payment of premiums on a policy ceases, and the company is unable to locate the insured or make a determination of death, the cash surrender value may be consumed under an automatic premium loan or other non-forfeiture provision. This is an unfortunate, often unavoidable, consequence for the beneficiary when the insured cannot be located.

Steps to be followed include:

1. Review the internal control over matured items.
2. Review the accounting procedures utilized in handling maturities.
3. Review reserve tabulations for matured items.
4. Analyze all maturities reserved at face value.
5. Analyze unpaid matured endowments and annuity payments.
6. Analyze terminated policies with cash value. Determine options available.
7. Analyze all policies having reached the limiting age and obtain a reserve listing. Interview the actuary and review any reports prepared by him/her.
8. Analyze any maturities taken into income or surplus or otherwise disposed of.
9. Review company follow-up procedures on maturities.
10. Trace, on a test basis, items reported as unclaimed property through the system to determine their origin, accounting treatment, and disposition.
11. Sample the master policy file to determine that no maturities are unrecorded.
12. Review policy files relating to questionable maturities.
13. Trace, on a test basis, purported payments of previously abandoned maturities to a canceled check or other documentation.



- a. Determine if interest and/or supplemental benefits have been paid.
- b. If so, examine reports of unclaimed property and verify that such amounts are included in report.
14. Obtain specimen copies of appropriate policies as deemed necessary.
15. Test dates of last contact on a sample basis.
16. Test the ratios of reportable maturities from year to year. Analyze variances.

COURT DEPOSITS / LAW ENFORCEMENT / UTILITY DEPOSITS

Refer to the list of Michigan type codes for each type abandonment period.

Steps to be followed:

Evaluate the system of internal control.

- a. Document system.
- b. Review controls over disbursement of deposits.
- c. Develop plan for determining what unclaimed property has not been properly reported.

This will need to be customized based upon the type of records maintained by the entity.

At the conclusion of each audit, Tichenor will submit a Report of Unclaimed Property Examination to the UPD. This report will include the following:

- Independent Accountant's Report;
- Schedule of Findings, which includes a summary of examination results, instances of noncompliance, and other comments;
- Statement of Examination Findings, which sets forth the amount currently reportable by property type, the amount future reportable by property type, and the total findings;
- Notes to the Statement of Examination Findings;
- History of the Holder and Its Operations; and
- Limited Procedures Performed, which sets forth in detail the examination procedures that were performed.

If the liability was determined through estimates due to incomplete or unavailable records, the methodology use and calculations made will be thoroughly detailed in the report.

In addition, Tichenor will report all unclaimed property to the UPD electronically using the NAUPA standardized unclaimed property reporting format. In addition, Tichenor will provide to the UPD in a comma delimited text electronic format monthly Work in Progress Reports which include the following information for each holder:

- Name of Holder
- State of Incorporation
- Federal Employer Identification Number
- Issue Name
- Property Type
- Engagement Date
- Status Commentary



2. 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:

Tichenor will demand from holders and/or their agent's delivery to Tichenor, the property deemed owing under the Act. All securities delivered shall be properly endorsed and in form for transfer. Tichenor shall determine if the endorsement is in the proper form for transfer. Tichenor will advise each holder of the statutory provisions for notifying owners of their property. Tichenor will notify the UPD if due diligence has not been carried out by the holder. Further, Tichenor will advise each holder of its continuing obligation to report property to the state. Tichenor will advise holders that all property reported and remitted must conform to the requirements of the Michigan Unclaimed Property Act.

Tichenor will cause all securities to be re-registered and delivered using Depository Trust Company (DTC) designations when applicable. For all securities that are not DTC eligible, Tichenor will cause them to be re-registered to the State Treasurer of Michigan and delivered in physical form to the UPD. All funds, securities, and other property constituting unclaimed property will be paid or delivered to the UPD. Delivery or payment is subsequent to the processing of holder's records and Tichenor's demand of report and payment or delivery. All funds, securities and other property will be segregated and securely maintained by Tichenor for a period not to exceed thirty (30) calendar days prior to disbursement to the UPD. Remittance documentation will indicate the date the property was received by Tichenor. The UPD will receive an interest credit from Tichenor equal to the interest earned on all cash funds held by Tichenor on behalf of the UPD from the date following the day the funds are paid in good funds to Tichenor until, but not including, the date such funds are remitted by Tichenor to the UPD.

3. 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:

Tichenor will report all unclaimed property to the UPD electronically using the NAUPA standardized unclaimed property reporting format, and will deliver the reports with the property being remitted. Tichenor will provide to the UPD in a comma delimited text electronic format monthly Work in Progress Reports which include the following information for each holder:

- Name of Holder
- State of Incorporation
- Federal Employer Identification Number
- Issue Name
- Property Type
- Engagement Date
- Status Commentary

In addition, Tichenor will provide the UPD with a Report of Unclaimed Property Examination for each holder audited. This report will include the following:



- Independent Accountant's Report;
- Schedule of Findings, which includes a summary of examination results, instances of noncompliance, and other comments;
- Statement of Examination Findings, which sets forth the amount currently reportable by property type, the amount future reportable by property type, and the total findings;
- Notes to the Statement of Examination Findings;
- History of the Holder and Its Operations; and
- Limited Procedures Performed, which sets forth in detail the examination procedures that were performed.

4. 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:

Since Tichenor is a CPA firm and properly licensed with the Michigan State Board of Accountancy and the American Institute of Certified Public Accountants (AICPA) it is qualified to follow Generally Accepted Accounting Principles and Generally Accepted Auditing Standards in its identification of unclaimed property, processing of records, and demands for payment from holders. **Only properly licensed CPA firms are allowed to perform audits and issue reports that follow these standards of AICPA.**

The examination of the books and records of holders of unclaimed property, the identification of unclaimed property, the demand for delivery of unclaimed property, and the processing and reporting of unclaimed property will be made pursuant to the following:

- The holdings of the U.S. Supreme Court in *Texas v. New Jersey*, 85 S.Ct. 1136 (1965), *Pennsylvania v. New York*, 932 S.Ct. 2880 (1972), *Delaware v. New York*, 113 S.Ct. 1550 (1993);
- The provisions of the Michigan Unclaimed Property Act and its implementing regulations; and
- Auditing Guidelines adopted by the UPD.

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.

Contractor Response to Task:

Using Tichenor's experience in performing successful audits of holders of unclaimed property in Michigan and West Virginia, Tichenor will select the best potential audit targets. Tichenor will search commercial databases containing public records to assist in identification of audit targets.



Once an audit selection is approved by the Unclaimed Property Division (“UPD”) Contract Compliance Inspector, Tichenor will immediately begin the process of auditing, identifying and delivering unclaimed property to the UPD from holders subject to the Michigan Uniform Unclaimed Property Act (the “Act”), provided that the holders are incorporated in or have significant business operations in the state of Michigan. The following procedures will be used to complete this task:

**INITIAL DEMOGRAPHIC OR ON-SITE REVIEW
AUDIT PROCEDURES**

INITIAL REVIEW:

In the initial review, the manager or supervisor will determine the following:

- The holder's state and date of incorporation
- Whether the corporation has ever changed its state of incorporation. If so, we will obtain details.
- Method of filing reports – e.g., consolidated, by division.
- The holder's history of reporting unclaimed property, including the amount and types of property reported.

Based upon the type of organization being audited, the manager/supervisor will prepare a list of potential types of unclaimed property that could be expected for the type of business being audited.

The manager/supervisor will note any areas of potential unclaimed property not appearing on the reports submitted by the holder as well as any inconsistencies in the reporting by the holder.

The manager/supervisor will then discuss these potential areas of focus with the Partner.

OPENING CONFERENCE:

- Opening Conference: Prior to the opening conference, the auditor must provide the holder with an approved confidentiality agreement and a copy of the UPD’s audit guidelines.
- Identify the audit period to be covered and the method to be employed, including sampling and estimation
- Explain any unique aspect of Michigan’s Unclaimed Property Law as compared to other states.
- Provide holder with name, title, address, telephone number, and facsimile number of the UPD’s examination liaison.
- Identify in writing all individuals who will participate in the examination.
- Explain that the holder shall remit any abandoned property identified during the examination to our firm (the contractor) and that our firm will remit the property to the UPD.
- Explain to the holder their appeal rights.
- Inform the holder of the provision of the Michigan Unclaimed Property Law regarding the holder’s duties to notify owners of unclaimed property.
- Advise the holder of their continuing duty to report unclaimed property and that property remitted must conform to the statute.
- Inform the holder that our firm is paid on a contingent fee basis.

When the manager/supervisor makes contact with the holder, he or she will attempt to determine the following: (Follow up with a written request)



- What is the name and title of the officer responsible for compliance with the unclaimed property statute?
- What is the name and title of the individual responsible for filing unclaimed property reports?
- Are file copies of reports and related working papers maintained by the holder and currently available? If yes, where are they located and who has custody?
- Are reporting procedures or policies relating to unclaimed property documented in procedure or policy manuals? If yes, obtain a copy.
- Does the holder use the criteria established by the U.S. Supreme Court in *Texas v. New Jersey*, 85 S.Ct. 1136 (1965) when reporting to the states? If not, what are the variances and reasons?
- Does the holder consider any category or type of property exempt from the unclaimed property reporting requirements that is at variance with the auditor's understanding of the law? If yes, obtain details and legal position.
- Have any policies relating to unclaimed property or services thereon been adopted by a formal resolution of the Board of Directors or a committee thereof? If yes, obtain a copy.
- Is the holder relying on an opinion from legal counsel regarding its reporting responsibilities under the unclaimed property law of this state or any other states? If yes, obtain a copy.

The chart of accounts will be reviewed for suspect accounts that may indicate the presence of unreported unclaimed property.

The manager/supervisor will discuss his/her findings with the Partner.

EXAMINATION PROGRAM FOR RECENT PERIOD:

In devising the audit program for a recent period, Tichenor will utilize the particular work programs designed for the various types of property involved. The following steps will be taken in the examination program for the recent period:

- Discuss the unclaimed property reporting procedures with the individual responsible for reporting unclaimed property. In particular, we will inquire about types of unclaimed property that we would expect to find at this type of holder that have not appeared on their unclaimed property reports.
- Discuss the unclaimed property reporting procedures with the individual responsible for preparing the unclaimed property reports. In particular, we will inquire about types of unclaimed property that we would expect to find at this type of holder that have not appeared on their unclaimed property reports. If this individual is not the same as the individual responsible for reporting unclaimed property, we will attempt to discuss these matters separately with each individual.
- We will ask that an individual who is responsible for gathering the information for unclaimed property demonstrate their process for each type of property. If inconsistencies between policies and actions taken by the holder's staff are identified, we will make the following inquiries:
 - Does the accounting staff responsible for identifying and collecting data related to unclaimed property have a proper understanding of unclaimed property procedures?



- Are they following the procedures?
- Are the procedures adequate for identifying and reporting unclaimed property?

Upon completion of the audit for the recent period we will then determine revisions necessary to audit the entire period.

After the initial testing of the recent period, the partner and the manager/supervisor will determine the potential for recovery and propose a budget to the UPD for the entire period.

CONDUCT AUDIT FOR THE ENTIRE PERIOD:

After the audit of the initial period and the revisions to the audit work program based on the audit of the initial period, an audit for the entire period will be conducted.

Tichenor will compute the amount due from the holder, hold an exit conference, and collect in accordance with the audit guidelines.

WORK PLAN EXAMPLES:

The following are work plan sections dealing with various types of holders of unclaimed property. They are:

- Outstanding checks: This could pertain to any type of outstanding check. This would include accounts payable, payroll, and client refunds.
- Property and Casualty Insurance. Claim checks and drafts.
- Mineral interests. (Royalties)
- Deposits held by banking organizations. This would include checking accounts, savings accounts and CD's.
- Unidentified deposits/remittances. Traveler's checks and money orders
- Safe Deposit and Safekeeping.
- Credit Balances
- Collateral.
- Employee benefit trust distribution (Pensions)
- Personal trust property
- Corporate trust property
- Equity and debt
- Credit memoranda/Gift certificates
- Life insurance death claims.
- Matured endowments, policies reaching age limit and other maturities due and payable.
- Court deposits/Law enforcement/Utility deposits.

Many of the following steps are geared toward a review of hard copy (paper records). When feasible, the auditor should obtain copies of the holder's computer files and use data extraction software to select the data to review. This may require the auditor (in consultation with the manager/partner) to modify the audit program based upon the type of records available.



OUTSTANDING CHECKS

For ease of tracking, the five-year abandonment period for an outstanding check is normally measured from the issue date. However, the auditor must determine the materiality of any period of time that may have passed between the date the obligation was originally payable and the actual issuance of the check. Checks are sometimes reissued with new dates in effort to avoid unclaimed property reporting.

Some holders will assert that simply printing *VOID AFTER 90 DAYS* or something similar on all their check stock exempts them from unclaimed property reporting. It doesn't. The check itself may be void, but the debt to the payee remains, and it is the money owed that is subsequently reported as unclaimed, not the piece of paper. Other holders may print terms on their check stock which state that the issuer will not honor claims for the funds specified on the check if it is not negotiated within a specified time. When this is found, it may be an example of *private escheat*, which is prohibited.

The following procedures are used in reviewing outstanding checks and drafts at most holders. Separate procedures are used for checks issued by banking organizations.

11. Obtain a list of all open and closed bank accounts.
12. Review the internal control maintained over outstanding checks and any other reconciling items on bank reconciliations.
13. Determine if it is a company policy to write off outstanding checks to income or the expense accounts related to the checks. This applies both to written policies and unwritten policies.
14. Determine what documentation is maintained regarding checks written off to income or written off against the expense accounts related to the check. The holder's staff may actually maintain a list of items which were written off.
15. Review all closed commercial checking accounts to determine the amount of outstanding checks at the time of closing.
16. Review liability accounts to which outstanding checks are transferred:

- a. Evaluate aging procedures.
- b. Test debit entries to determine their nature.
- c. Reconstruct any checks written off to income or retained earnings.

17. Review income accounts to determine if any other checks have been written off.
18. Determine if checks returned by the Post Office (RPO checks) are handled differently from other outstanding checks to avoid misunderstandings and omissions when requesting records.
19. Determine if checks are prepared for payroll, vacation pay, severance pay, retirement and pension plan refunds, etc., belonging to terminated employees for periods subsequent to termination.
20. Review procedure for contacting payees of uncashed checks.

**PROPERTY AND CASUALTY INSURANCE****CLAIM CHECKS AND DRAFTS**

In addition to the above discussion of outstanding checks, property and casualty insurance companies can present additional challenges to the auditor:

First is the question of when the company recognizes a claim as paid for purposes of reporting. Paid claims are considered in establishing premium rates for future periods. If the paid claims reported by the company are based on the total claim drafts issued during the period, it is said to be accounting for them on the *issued* basis. If the company reports only those claim drafts that were actually presented for payment and cleared, it is said to be using the *paid* basis of accounting. The use of the paid basis of accounting for claim payments is no longer common. Still, to avoid reporting claim payments as unclaimed property, some companies attempt to argue that their outstanding claim payments are simply offers of settlement, not liquidated debt, even though they account for these payments on the issued basis for reporting.

The second and most time-consuming challenge for the auditor is that of true offers of settlement commingled with payments for liquidated damages on the insurance company's list of outstanding claim checks or drafts. Upon examination of the related claim files, the auditor may find that offers of settlement continue to be carried on the list of outstanding claim payments long after subsequent settlements have been made and replacement checks or drafts have been issued and cleared.

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15. The unrepresented draft report includes offers of settlement. Review procedure for contacting payees of uncashed checks and drafts.

MINERAL INTERESTS (Royalties)

Oil and gas companies hold royalties in suspense for many good and sufficient reasons, such as title disputes, clouded titles, or unpaid amounts due from the royalty owner on other business. Royalty suspense ledgers are a necessary part of the accounting system and here, as elsewhere, unclaimed property appears as an exception to the normal flow of business.

In addition to royalties payable from a company's own production, unclaimed royalty payments are also acquired through the buying of leases from other oil and gas companies. The abandonment periods for these suspended royalties should be calculated from their original payment dates, not the date received by the acquiring company.

Audit Steps:

1. Review the internal control maintained over the mineral interest suspense account.
2. Request a detailed printout of the suspense ledger used in preparing unclaimed property reports.



- a. Review the suspense ledger for accounts reported and those not reported.
- b. Schedule the significant accounts not reported and obtain documentation as to why they were not reported.
- c. Review owners previously reported and test to determine if all money owed to those owners has been remitted to the State.
- d. Review owners not reported and test the dates of production for reliability.

3. Obtain reports filed with other states and determine if:

- a. Property, with associated owner addresses, is reported to the state of last known address or state of production.
- b. Property, without associated owner addresses, is reported to the state of incorporation or state of production.

4. Determine if the production cutoff dates conform to reporting requirements.

5. Determine if the holder has removed owners from suspense for reasons other than payment to the owners:

- a. Inactive accounts purged from the system.
- b. Old dates of production transferred out of system.
- c. Wells plugged and abandoned.
- d. Sale of the leases.
- e. Change in the EDP system.
- f. Write-offs to income, other revenue, etc., for any other reason.

6. Determine if leases that have been sold have documentation to provide the terms of the contract as they apply to the liability suspense.

7. Determine if any mergers/acquisitions with other producers have taken place.

- a. Obtain information as to the disposition of the previous company's suspense system.
- b. Were there any suspense funds not converted into the surviving suspense system? (If so, obtain details.)

8. Determine if RPO checks generate a transfer of the owner's underlying interest from pay status to suspense.

9. Determine if original production dates are retained in suspense ledger when interests are transferred as a result of outstanding or RPO checks.



10. Inspect outstanding check lists for recurring names. Determine if these are being transferred to suspense.

DEPOSITS HELD BY BANKING ORGANIZATIONS

Contact between the holder and the assumed owner resets the clock for purposes of abandoned property. Positive, documented contact between the holder and the owner is required for keeping an account in active status. Change of address notifications, payments on loans, activity in other accounts belonging to the same owner, are all valid contact. However, the auditor must test for what else updates the last contact field in the holder's system. Examples of invalid updates to a depositor account's last contact date include automatic deductions of safe deposit box rental, automatic deposits of interest from one account into another, statement mailings and internally-generated file maintenance.

Special rule for certificates of deposit (CDs): The abandonment period begins to run on the maturity date. In the case of automatically-renewable CDs, the first maturity date is used.

When examining this type of property:

6. Obtain a list of the categories of deposits offered by the organization.
7. Review the system of internal control over the deposit accounting system.
8. Evaluate the controls placed over inactive accounts.
9. Test system as documented above:

- a. Trace accounts from active files to dormant control.
- b. Trace accounts from dormant control to active files.
- c. Trace accounts reported to State:
 - (1) Identify all unlawful service charges taken.
 - (2) Compute interest not accrued and credited to the accounts.
- d. Review automatically-renewable certificates of deposit for customer-generated activity.

10. Reconstruct accounts service charged off prior to becoming reportable:

- a. Add back all unlawful service charges taken.
- b. Compute interest from date interest no longer accrued to nearest preceding month as of the examination.

**UNIDENTIFIED DEPOSITS/REMITTANCES**

Banks, savings associations, and credit unions will typically hold unidentified deposits in a demand deposit account under that name, *Unidentified Deposits*. With on-line computer terminals at every teller station, unidentified deposits occur less often than in the past because tellers attempt to post deposits with customers still at the window. Most unidentified deposits now result from nighttime and mail deposits with incorrect or missing deposit slips.

Other companies with large volumes of direct billing to customers also receive unidentified remittances. Insurance companies, utility companies, and hospitals occasionally receive payments by mail from people who intend to pay someone else's bill or send their payment to the wrong company. Posting to the correct account is delayed, or sometimes not possible, when the party making the payment doesn't include a payment voucher from the bill, doesn't include an account number with the payment, has an incorrect address on their check, or pays with a money order containing no address. Until the true owner is identified, or the funds are written off to income, unidentified remittances are often held in liability accounts with titles such as *Unidentified Remittances*, *Unapplied Payments*, or *Unapplied Cash*.

Unidentified deposits and remittances are usually a small part of an auditor's findings but, despite the holders' best efforts to prevent them, they continue to occur when the holder has a large volume of transactions with the general public.

Steps to be followed include:

8. Review the internal control over unidentified deposits and remittances.
9. Review the accounting procedure on unidentified deposits and remittances.
10. Analyze suspense and liability accounts utilized for all unidentified payments received.
11. Analyze aging procedure on the transferal of unidentified payments.
12. Determine the ultimate disposition of uncleared unidentified items.
13. Analyze all amounts taken into income or surplus.
14. Sample suspense accounts and liability accounts used for recording and controlling unidentified items.

CHECKS ISSUED BY BANKING ORGANIZATIONS

(or the purposes of this section, the terms bank and banking organization should be considered to include savings associations and credit unions as well.)



The most common reason for checks to go unreported is that they are simply overlooked. Many banking organizations have multiple series of cashier's checks and the inadvertent omission of a single series is not uncommon. Writing them off to income is less common, but has been discovered by auditors in past.

Audit Steps to perform:

6. Obtain a list of all instruments issued by the bank.
7. Evaluate and document the system of internal control over outstanding bank checks.
8. Review aging process.
9. Test system as documented above as follows:

- a. Trace items from issuance register to outstanding control.
- b. Trace items from outstanding control to issuance register.
- c. Trace items reported to State.
 - (1) Agree issue dates, issue amounts and names.
 - (2) Add back all service charges taken.

10. Reconstruct bank checks charged off prior to becoming reportable.

- a. Add back all charge off.
 - (1) From actual records.
 - (2) From projections, if necessary.

The owner of a check is the payee. Occasionally, banks will mistakenly not report cashier's checks because they know the whereabouts of the purchaser but, unless it is positively known that the purchaser is still holding the original copy of the check, contact with the purchaser is irrelevant.

TRAVELER'S CHECKS AND MONEY ORDERS

Both traveler's checks and money orders are reportable to the state in which they were purchased. This is an exception to the general rule that property is to be reported to the holder's state of incorporation when there is no last known address for the owner. Money orders issued by non-financed institutions have a seven year abandonment period. Those issued by financial institutions have a seven year period.



While the 15-year abandonment period for traveler's checks may seem excessively long, the reason for it lies in the many unused checks that remain in the purchasers' possession in anticipation of future vacations. This is supported by the large volume of claims for reimbursement received by states from the issuers after the holders have honored these 15+ year-old traveler's checks. The purchasers do still use them after all that time. The auditor may follow the same procedures as listed above for checks issued by banking institutions. Banks and small money order companies have been found to write money orders off to income in the past.

SAFE DEPOSIT AND SAFEKEEPING

Both these property types, found at banking organizations, will require a trip to the vault for the auditor.

For safe deposit boxes, the five-year abandonment period begins to run on the date the last rental payment expired.

Steps to be followed include:

1. Evaluate the system of internal control over safe deposit boxes on which rent is due and unpaid.
 - a. Document system.
 - b. Review controls over signature cards and entry cards.
 - c. Examine contents of forced boxes.
 - d. Trace items reported to inventories of forced safe deposit boxes.
2. Evaluate the system of handling safekeeping items.
 - a. Document system.
 - b. Examine safekeeping register:
 - (1) Prepare a schedule of unreported items.
 - (2) Note items appearing on register not accounted for in safekeeping.

CREDIT BALANCES

Unclaimed property found in credit balances is not always found in accounts payable. Patient accounts receivable at hospitals and customer accounts receivable at credit card and utility companies are good examples of the types of holders who, by the nature of their business, have relatively large volumes of accounts receivable credit balances. When checks are not routinely issued to the owners for these balances, the auditor will often find that these balances are absorbed into income before the running of the five-year abandonment period and not reported as unclaimed property.



Steps to be followed include:

6. Obtain a list of categories of credit balances generated by the holder.
7. Evaluate and document the systems and procedures for processing credit balances.
8. Review a listing of credit balances.

- a. Evaluate aging procedures.
- b. Determine if balances of less than \$1.00 are refunded.
- c. Determine amounts that are reportable.
- d. Test debit entries to determine their nature.
- e. Reconstruct any items written off to an income or related expense account.

9. Analyze income accounts to determine whether credit balances have been taken into income. Also, review related expense accounts to determine whether credit balances are used to offset expenses/bad debts.
10. If holder is a retail company, determine if holder entered into a consent decree with FTC. If so,

- a. Obtain information provided to FTC.
- b. Ascertain what periods were included in the consent decree and whether balances unclaimed under the decree have been reported.
- c. Examine for pre-decree balances.

Among other things, the Federal Trade Commission's (FTC) Regulation Z prescribes customer-notification requirements for credit balances of \$1.00 or more held by credit card companies. Since Regulation Z is silent as to the disposition of credit balances under \$1.00, some credit card issuers incorrectly refer to it as their authority to absorb these small credit balances. They often do so by programming their computers to net credit balances of less than \$1 against debit balances of less than \$1. The net figure is then used in the general journal entry to write off these small balances. However, there is no minimum value to be met on any type of unclaimed property subject to reporting.



COLLATERAL

Collateral has a five-year abandonment period, measured from the date the associated loan was paid off. Of course, the same criteria regarding subsequent contact with the owner still applies, as it does with any type of property. The auditor should check the lender's central information files for current contact with the borrower before assuming that collateral being held for long periods is unclaimed.

In anticipation of future loans, particularly in the case of commercial loans, certificates for pledged stocks and bonds are often intentionally left with the lender by the borrower after the original loan is paid off. At banking organizations, the Loan Department likely deposited these items with the Safekeeping Department and has copies of the safekeeping receipts on file. Using those receipts makes it easier for the auditor to physically locate collateral. Occasionally, it's found that the Safekeeping Department has a record of collateral being returned to the owner, but the safekeeping receipts were not removed from the Loan Department's files.

Steps to be followed include:

4. Review and document the system of internal control over collateral held.

5. Examine collateral register for aged items:

a. Trace collateral to loan files.

b. Review central information files.

6. Inspect all collateral held.

a. Trace aged items to collateral register for activity.

b. Determine the status of collateral being held on fully-paid loans.

EMPLOYEE BENEFIT TRUST DISTRIBUTIONS (Pensions)

Large employers often establish some form of employee benefit/retirement plan. Retired and ex-employees move away, the plan administrator loses contact with them and their benefit distributions remain unclaimed. Often, a bank's trust department is the plan administrator and the auditor will require an introduction from the company before auditing records at the bank.

This is an area of continuing controversy. Employee benefit trusts (EBTs), established under the provisions of the Employee Retirement Income Security Act (ERISA), call for unclaimed distributions to be absorbed back into the trust for the benefit of the remaining members. This contradicts the prohibition against private escheat included in the unclaimed property statutes of many states.



The results of step 1, then, will assist the auditor in deciding whether to continue with the rest of the audit of the employee benefit plan.

Steps to be followed:

9. Determine the legal nature of EBT plans for the treatment of unpaid benefits.
10. Review the internal control over distributions.
11. Review the accounting procedure on distributions.
12. Age all outstanding or unpaid distributions subject to reporting.
13. Analyze liability accounts related to distributions or payments.
14. Trace reported distributions through the holder's system to determine their origin and disposition.
15. Review trust accounts and related declarations of trust.
16. Analyze accounts used in connection with revocable or irrevocable trust deposits. Review trust agreements as deemed necessary.

PERSONAL TRUST PROPERTY

The most frequently occurring form of unclaimed personal trust property is the excess of dividends over what can be allocated to personal trust accounts. This occurs as a result of timing differences between the sale of securities on behalf of one or more trust accounts and the declaration of dividends by the issuer of the securities.

Usually, the issuer's dividend disbursing agent will follow up with a refund request for excess dividends after being contacted by the new owner of the securities, but not always. Some dividend disbursing agents even refuse the trust company's attempts to return unallocable dividends when they haven't heard from the new owners because, left as is, their records balance.

Steps to be followed:

8. Evaluate and document the system of internal control over unclaimed items.
9. Examine dividend and interest clearing accounts:

- h. Analyze aging procedure.
- i. Trace items from active accounts to special control accounts.
- j. Trace items reported to the State.
 - (1) Reconcile dates and amounts.
 - (2) Add back all charges taken and amounts offset improperly.

10. Undeliverable fiduciary checks:

- k. Analyze controls for outstanding checks and the disposition of same.
 - (1) Prepare a schedule of unreported outstanding checks.
 - (2) Test for write-offs of outstanding checks.



11. Suspense accounts:

- l. Obtain a list of general ledger suspense accounts.
 - (1) Select accounts for further testing.
 - (2) Evaluate the internal controls over these accounts.
- m. Test claims:
 - (1) Trace items reactivated from suspense accounts.
 - (2) Test for write-offs of suspense account items.
 - (3) Trace items reported to the State.
 - (a) Add back all charges taken.
 - (b) Reconstruct amounts offset to unrelated debit items.
- n. Reconstruct amounts improperly charged off or taken into fees prior to becoming reportable.

12. Analyze controls for uncleared unallocable dividends and the disposition of same.

13. Analyze suspense stock and bond positions for unclaimed stock, dividends, and interest that cannot be allocated to individual trust accounts.

14. Test for the sale of suspense stock certificates and the ultimate disposition of the proceeds.

CORPORATE TRUST PROPERTY**Coupon-Bond Paying Agent**

The bond-paying agency of a bank's corporate trust department is frequently out of balance in many of its client accounts when the bonds are bearer instruments. Bond issuers transfer funds to the paying agent at each coupon maturity date to cover that period's interest payments. Though some commingling of funds may occasionally be found, the common procedure is for the agency to deposit the funds to the appropriate demand deposit account (DDA) set up for each specific bond series. Bond and coupon redemptions are then paid directly from those accounts.

Some bond paying agents have such tight controls on these DDAs that they are able to report exactly which coupons from which numbered bonds remain outstanding. However, the many similar names of the different bond series increase the chances for clerical errors when interest coupons are received for payment. Coupons from one series of bonds are redeemed with funds received for another series and, within a few years, the accounts can be hopelessly out of balance.



Steps to be followed:

6. Evaluate and document the procedures for processing of undeliverable and outstanding interest payments.
7. Review document files for debt accounts and obtain copies of pertinent sections of the indenture agreements instructing the trustee.
8. Evaluate the internal control over undeliverable property.
9. Test currently open and closed principal and interest control accounts for:
 - a. Unreported property.
 - b. Property service charged or charged off.
10. Test transaction journals for questionable entries for: (Redemption accounts, debt maturity accounts for both principal and interest.)
 - c. Service charging.
 - d. Charge-offs.
 - e. Fees being charged.
 - f. Offsetting to recoveries accounts.
 - g. Return of funds to principal.
 - h. Accounting offset of unrelated property.

Dividend Disbursing Agent

Even when the actual certificates are presumed to be in the possession of the missing owner, stock shares must be reported as abandoned if:

- All distributions have remained unclaimed, *or* mail addressed to the owner has been returned as undeliverable, for at least three years,
- The owner has not communicated with the holder, in writing or otherwise, within the past three years, and
- The location of the owner is unknown.

When reported, these are identified as *underlying shares*. Please note, the **only** time mail not returned by the Post Office prevents the assumption of abandonment is when there have been no distributions during the previous three-year period.

1. Document the system of internal control over the issuance of cash dividends.
 - a. Obtain a listing of cash dividend bank accounts.
 - b. Obtain oral evidence as necessary to supplement the working papers.
2. Evaluate and document the system used for the processing of undeliverable or uncashed cash dividends.
3. Evaluate the internal control over undeliverable or uncashed cash dividends.
4. Test transaction journals for questionable entries.
5. Determine if underlying shares are subject to reporting.



Stock Transfer Agent/Exchange Agent

1. Document the system of internal control over the issuance of stock dividends and fractional-share payments.
2. Document the internal control over undeliverable stock dividends and fractional-share payments.
3. Evaluate and document the system used for the processing of undeliverable stock dividends.
4. Test transaction journals for questionable entries.
5. Age undelivered stock dividend records and determine if unreported dividends and fractional-share payments exist.
6. Evaluate the internal control over unexchanged stock and fractional-share payments.
7. Evaluate and document the system used in accounting for unexchanged stock.
8. Test transaction journals for questionable entries.
9. Age unexchanged stock records and determine if unreported stock and fractional-share payments exist.
10. Determine if underlying shares are subject to reporting.

Receiverships

1. Obtain a list of liquidated corporations for which the holder has been appointed a receiver.
2. Evaluate the internal control over unclaimed distributions.
3. Test transaction journals for questionable entries.
4. Age liquidation distribution records and determine if any unclaimed distributions are subject to reporting.

EQUITY AND DEBT

The auditor may find the required records at the holder's office, but frequently this function is contracted out to one or more agents.

Steps to be followed:

12. Research outside sources such as Capital Clearinghouse (CCH) Changes Reports prior to commencing the examination. Analyze the history of holder, i.e., classes of stock outstanding, stock splits, stock dividends, mergers, acquisitions, spin-offs, etc.
13. Prepare a list of all merged or acquired companies where acquisition was made in a stock-for-stock deal.

Determine:

- a. The date of merger or acquisition.
- b. The exchange ratio.
- c. If there was cash in lieu of fractional shares or liquidating distribution rates.
- d. If the merged company was a public company.
- e. The merged company's predecessor transfer agent.
- f. The merged company's dividend history.
- g. The disposition of unclaimed dividends subsequent to merger.



14. Obtain a list of matured or called debt (bonds, debentures, or notes) for the holder and/or merged companies.
15. Determine if the merged company filed reports with the State. Obtain and review copies of these reports for any previously reported property.
16. Request an introductory phone call or letter from the holder to review the accounting records of the outside agent, if necessary.
17. Request a copy of written procedures used to handle and account for unclaimed equity and debt.

- a. Evaluate and document the adequacy and utilization of the above procedures.
- b. Evaluate the internal control over reportable property.

18. Determine if the aging of items is proper.
19. Reconstruct charges on any items or items charged off completely.
20. Trace items previously reported to the State to source records and note exceptions.
21. Obtain oral evidence as considered necessary to supplement the working papers.
22. Determine if authorization has been given by the holder to an agent to report unclaimed property to selected states.

Shareholder Equity

1. Obtain any legal opinions relating to the reporting of stock, dividends, underlying shares, etc.
2. Evaluate the system of internal control over records of inactive shareholders.
3. Analyze the procedures used to identify and report underlying shares and/or lost shareholders.
4. Obtain copies of agency contracts relating to applicable mergers, acquisitions and liquidations.
5. Evaluate and document the carrying forward of potential unclaimed property from prior transfer or paying agents and the ultimate disposition of same.
6. Determine the disposition of potential unclaimed property held for or by subsidiaries of the holder by prior agents.

Cash and Stock Dividends

1. Document the system of internal control over the issuance of cash and stock dividends.
 - c. Obtain a listing of cash dividend bank accounts.
 - d. Age check registers and determines if unreported dividends exist.
2. Evaluate procedures used to report outstanding dividend checks.
 - a. Reconstruct any dividends charged off.
 - b. Obtain oral evidence as necessary to supplement the working papers.
3. Evaluate and document the system used for the processing of undeliverable cash and stock dividends.
4. Evaluate the internal control over undeliverable cash and stock dividends.
5. Test transaction journals for questionable entries.
6. Determine if underlying shares are subject to reporting.


Unexchanged Stock

1. Evaluate and document the system used in accounting for unexchanged stock.
2. Evaluate the internal control over unexchanged stock and fractional-share payments.
3. Age unexchanged stock records and determine if unreported stock and fractional-share payments exist.
4. Test transaction journals for questionable entries.
5. Determine if underlying shares are subject to reporting.

Principal and Interest on Debt Issues

1. Account for debt redemptions, maturities, and the disbursement of interest payments for registered and bearer debt instruments. (Until the early 1960s most debt securities were issued in bearer form.)
 - f. Evaluate and document the system of internal control and procedures for the processing of undeliverable and outstanding interest payments.
 - g. Review pertinent sections of the bond indenture agreements requiring the trustee to return outstanding and undeliverable interest checks or proceeds from unrepresented coupons or uncashed checks to the holder after a stipulated period.
 - h. Review registration requirements of each security.
 - i. Review currently open and closed principal and interest control accounts for:
 - (1) Unreported property.
 - (2) Property service charged or charged off.
 - j. Test transaction journals relating to principal redemption or interest payments for questionable entries: (Redemption accounts and debt maturity accounts for both principal and interest.)
 - (1) Service charging or other fees.
 - (2) Charge offs.
 - (3) Offsetting to unrelated accounts.
 - (4) Return of funds to principal. Requires a separate follow-up.

CREDIT MEMORANDA, GIFT OR MERCHANDISE CERTIFICATES, SCRIP OR INSTRUMENTS
REPRESENTING CASH

Gift certificates that are redeemable for merchandise or services are considered to be abandoned at the price paid by the purchaser for the gift certificate.



5. Determine if last known address of purchaser can be obtained, e.g., credit records, original issuance records, etc.
6. Determine if the accounting system permits aging of outstanding instruments. If not, use estimating procedures.
7. Analyze selected accounts to determine whether any outstanding credit memos have been taken directly into income or credited to an expense account.
8. For gift certificates, if these are not segregated in liability or reserve accounts, review tax returns to determine the amount unreported and reported to the IRS as income. The holder may have reported the amounts in the taxable year following receipt, in accordance with U.S. Treasury Regulation 1.451-5.

LIFE INSURANCE DEATH CLAIMS

The auditor will often find that the reasons some death claim payments are still unpaid years after the date of death relate to disputes between the heirs. Questionable circumstances surrounding the death of the insured, such as the beneficiary's contribution toward bringing about the death, can also hold up payment.

These are certainly valid reasons for delaying payment, but they cannot be used indefinitely. The auditor's inquiries may bring long-standing unpaid death claims to the attention of the holder, with the only reasonable resolution being to report the benefits for an *unknown* owner.

When examining this type of property:

10. Review the internal control over the death claim payment procedure.
11. Review the accounting procedures utilized to handle death claims.
12. Review the company's follow-up procedure on paying death claims.
13. Review the death claims register or listing for any aged items.
14. Trace a sample of unclaimed payments to policy files.
15. Analyze all death claims held in suspense or unpaid after a specified cutoff. Interview company attorney regarding disputed death claims.
16. Trace claims reported as unclaimed property through the system to determine their origin and disposition.
17. Analyze all claims taken into income or surplus.



**MATURED ENDOWMENTS, POLICIES REACHING LIMITING AGE, AND OTHER MATURITIES DUE
OR PAYABLE**

People usually know if they have been named as beneficiaries on life insurance policies. In the event they do not, however, they are unable to inform the life insurance company of the insured's death. Without that information, the death benefits are not yet payable, the abandonment period cannot begin to run and, if the company doesn't learn of the insured's death through other means, the abandonment period will not commence until the limiting age specified in the policy is reached.

In the case of annuity payments and other obligations that are conditioned upon the continued life of a person, those payments are not considered to be "due and payable" in the absence of proof that the payee was alive at the time required by the contract. So, while losing contact with a payee often starts the abandonment period for other types of personal property, it will generally, and properly, result in the cessation of payments made pursuant to an annuity contract.

If the payment of premiums on a policy ceases, and the company is unable to locate the insured or make a determination of death, the cash surrender value may be consumed under an automatic premium loan or other non-forfeiture provision. This is an unfortunate, often unavoidable, consequence for the beneficiary when the insured cannot be located.

Steps to be followed include:

17. Review the internal control over matured items.
18. Review the accounting procedures utilized in handling maturities.
19. Review reserve tabulations for matured items.
20. Analyze all maturities reserved at face value.
21. Analyze unpaid matured endowments and annuity payments.
22. Analyze terminated policies with cash value. Determine options available.
23. Analyze all policies having reached the limiting age and obtain a reserve listing. Interview the actuary and review any reports prepared by him/her.
24. Analyze any maturities taken into income or surplus or otherwise disposed of.
25. Review company follow-up procedures on maturities.
26. Trace, on a test basis, items reported as unclaimed property through the system to determine their origin, accounting treatment, and disposition.
27. Sample the master policy file to determine that no maturities are unrecorded.
28. Review policy files relating to questionable maturities.
29. Trace, on a test basis, purported payments of previously abandoned maturities to a canceled check or other documentation.



- a. Determine if interest and/or supplemental benefits have been paid.
- b. If so, examine reports of unclaimed property and verify that such amounts are included in report.

30. Obtain specimen copies of appropriate policies as deemed necessary.
31. Test dates of last contact on a sample basis.
32. Test the ratios of reportable maturities from year to year. Analyze variances.

COURT DEPOSITS / LAW ENFORCEMENT / UTILITY DEPOSITS

Refer to the list of Michigan type codes for each type abandonment period.

Steps to be followed:

Evaluate the system of internal control.

- d. Document system.
- e. Review controls over disbursement of deposits.
- f. Develop plan for determining what unclaimed property has not been properly reported.

This will need to be customized based upon the type of records maintained by the entity. At the conclusion of each audit, Tichenor will submit a Report of Unclaimed Property Examination to the UPD. This report will include the following:

- Independent Accountant's Report;
- Schedule of Findings, which includes a summary of examination results, instances of noncompliance, and other comments;
- Statement of Examination Findings, which sets forth the amount currently reportable by property type, the amount future reportable by property type, and the total findings;
- Notes to the Statement of Examination Findings;
- History of the Holder and Its Operations; and
- Limited Procedures Performed, which sets forth in detail the examination procedures that were performed.

If the liability was determined through estimates due to incomplete or unavailable records, the methodology use and calculations made will be thoroughly detailed in the report.

In addition, Tichenor will report all unclaimed property to the UPD electronically using the NAUPA standardized unclaimed property reporting format. In addition, Tichenor will provide to the UPD in a comma delimited text electronic format monthly Work in Progress Reports which include the following information for each holder:



- Name of Holder
- State of Incorporation
- Federal Employer Identification Number
- Issue Name
- Property Type
- Engagement Date
- Status Commentary

- 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:

For Contractor-Assisted Self-Audit Tichenor will assist and/or oversee the holder that performs its own general ledger and/or securities self-audit. In most case we will not take physical custody of the holder's financial records and will not perform an examination or audit of the records. For this Contractor-Assisted Self-Audits we will provide the following processes/services.

- Provide the holder with the requirements of the unclaimed property laws
- Provide details of the reporting requirements
- Provide the necessary information to the holder or holder's agent regarding unclaimed property and the reporting process
- Provide other necessary guidance and assistance to the holder so that the holder can accurately perform a self-audit

Tichenor will design a packet of information to be provided to each of the holders that is to perform a self-audit. This packet will include information covered in the above four areas.

Upon completion of the holder's completion of the self-audit, Tichenor will obtain the required information from the holder to prepare the unclaimed property report and forward the report and remittance to the UPD after Tichenor performs an internal quality review to determine that the report is complete, in proper format, in accordance with nationally accepted NAUPA format and in compliance with the Act. Tichenor will use its quality control checklist to document the completeness, proper format and compliance of each report before forwarding to the UPD.

Tichenor understands that it will only be compensated by the State for audit work performed on the initial holder engagement for Contractor-Assisted Self-Audits. Tichenor understands that it will not be compensated by the State for any work that it may perform for the holder in subsequent years. Also, Tichenor understands that 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.



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. Identify Contractor staff who will be involved, identify by name the individuals, and describe in detail their roles and responsibilities. Descriptions of roles should be functional and not just by title. Include an organization chart in Article 1, Attachment B.

Contractor Response to Task:

Tichenor has identified in the Qualified Personnel/Staffing section of this Technical Proposal the staff auditors who will be on-site and in charge of the various audits assigned under the contract. The staff assigned to this contract are experienced in performing audit services similar to the services required by this ITB. The following table demonstrates their years of audit experience, title, education and estimated dedicated time.

Name	Title	Education	Years Audit Experience	Dedicated Time (Hrs/Yr)
William Tichenor (Key Person)	Contract Partner	B.A., CPA, CGFM	34	500
Jack Somerville (Key Person)	Project Manager	B.S, CPA	4	2,080
David M. Gross	Senior Auditor	B.S.	36	1,000
Florence Williams	Senior Auditor	B.B.A.	15	1,000
Steve Sickmiller	Senior Auditor	B.A.	4	1,000
Jerry Hiles	Senior Auditor	M.S., CPA	10	1,000
David Hesse	Senior Auditor	B.S.	4	1,000
Donna Lee	Senior Auditor	B.B.A., CPA	5	1,000
Darrell Powell	Senior Auditor	B.S.C., B.A., CPA	22	1,000
Monika Vowels	Senior Auditor	B.S., CPA	6	1,000
Matt Mitchell	Staff Auditor	B.S.B.A.	3	1,000
Kevin Cornett	Staff Auditor	B.S.	1>	1,000
Steve Roy	Staff Auditor	B.S.	1>	1,000

Refer to **Attachment 2** for detailed resumes of the contract partner, project manager and senior personnel proposed to work on this contract. The proposed personnel (contract partner, project manager and senior auditors) have total combined years of audit experience of 154 years.



The following are the levels of audit experience and the general job functions for each of the proposed labor categories:

Partner – The partners maintain contact with the firm's clients including consultation over important issues. The partners are also responsible for supervision of the staff and establishment of the policies of the firm. The engagement partner performs a final technical review of all working papers and audit reports prior to issue. A partner possesses extensive technical and management experience and holds a CPA license.

Audit Manager – Audit managers have at least four years of auditing experience and each is a Certified Public Accountant. The audit manager is responsible for completing engagements and may oversee two or more engagements simultaneously. The audit manager reviews working papers, financial statements and reports. Additionally, the audit manager directs the senior and staff auditors, reviews and approves work place programs and ensures that assignments are carried out on a timely basis. The audit manager follows the progress of the engagements and helps resolve accounting, auditing and reporting issues.

Audit Supervisor – Audit supervisors have at least three years of auditing experience. The audit supervisor is responsible for completing engagements and may oversee two or more engagements simultaneously. The audit supervisor reviews working papers, financial statements and reports. Additionally, the audit supervisor directs the senior and staff auditors, reviews and approves work place programs and ensures that assignments are carried out on a timely basis. The audit supervisor follows the progress of the engagements and helps resolve accounting, auditing and reporting issues.

Senior Auditor- All senior auditors have at least two years of auditing experience and perform most examinations with a minimum level of supervision. The senior auditor directs the work of staff auditors, instructing them in the work they performed, reviewing completed working papers and directing revisions. The senior auditor is also responsible for developing the audit report.

Staff Auditor - All staff auditors have a bachelor's degree in accounting from an accredited institution and less than one year auditing experience. The staff auditor performs specific audit procedures under the direction of the senior auditor. The staff auditor performs testing and other auditing review procedures. Additionally, the staff auditor prepares working papers that adequately document procedures performed and substantiated conclusion reached. The staff auditor also assists in the preparation of audit reports.

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.
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.
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.
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:

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 Tichenor's past experience in performing audits for state governments, it has identified two types of issue areas to be managed. The first is the actual administration of the contract and the second is the audits. The following are the different areas that need to be managed under each and Tichenor's method of resolving issues or management controls in place to prevent any issues from arising.

a. Administration of the Contract

- (1) Tichenor contract partner works with Tichenor audit managers to develop implement and monitor an overall project plan. Tichenor will work with UPD staff to assure that the plan is updated, completed on time, and within budget requirements.
- (2) Tichenor will provide UPD any needed justification and support should any contract changes be required.
- (3) Tichenor contract partner and support staff will provide timely, accurate and documented invoices for services.
- (4) Invoices include type of service, period of service, auditor providing service, number of hours per period by auditor, audit assignment for hours and total amount due.
- (5) Tichenor's onsite auditors use a software time system (Go Systems) to maintain their time and travel expenses on a daily basis. This time system provides the date, assignment and hours each auditor incurs on each audit assignment.
- (6) Tichenor field auditors provide the Tichenor audit managers a spreadsheet with hours, days and audit assignment for review. This spreadsheet will be forwarded by email to the UPD Contract Administrator for use in reconciliation to Tichenor invoices at month end.

b. Audits

- (1) Tichenor contract partner works with Tichenor audit managers to develop, implement and monitor an overall project plan. Tichenor will work with UPD staff to assure that the plan is updated, completed on time, and within budget requirements.
- (2) Tichenor contract partner and audit managers will meet quarterly in Lansing, Michigan at UPD with the appropriate staff to review the plan and discuss any current or future audit issues to determine what they are and the possible approaches and resolution of the issues.
- (3) Tichenor audit managers will meet with the UPD Administrator and audit managers at least once every two weeks in person or by telephone conference to discuss any audit issues and resolution of them.
- (4) Tichenor audit managers will contact the appropriate UPD staff on a daily basis if an audit issue is identified and needs to be addressed. This contact can be done by phone, fax or email.
- (5) Tichenor's audit managers onsite with the various audit teams and address audit issues in the planning process, fieldwork and report process. If the audit issue cannot be resolved by the Tichenor audit manager, then the appropriate UPD staff manager will be contacted and the issue will be discussed and resolved. All audit issues identified will be properly documented in the work papers as to what the issue was and the resolution of the issue.
- (6) Tichenor's onsite audit teams consist of an audit manager, senior auditor(s) and staff auditor(s). If the staff auditor identifies an audit issue he or she directs the issue to the senior auditor for resolution or discussion with the audit manager. If the audit manager cannot properly resolve the audit issue, then he or she will contact the appropriate UPD assigned person for assistance with resolving the issue.

In Tichenor's experience in providing audit services under its current contracts with the Michigan UPD and the West Virginia Office of the State Treasurer, potential issues that are specific to unclaimed property audits have been identified. Tichenor has developed a plan to successfully manage these issues should they arise. The issues include:



- Difficulty in obtaining information from the holder. In such case, the managing partner will contact the state treasurer's office if necessary.
- Missing or incomplete records. If there are missing or incomplete records Tichenor will utilize estimates based on the records that are available. This will be done in consultation with the Partner/Manager/Supervisor.
- The holder may challenge the auditor's authority to perform the audit. To resolve this issue, the auditor is provided with a letter of introduction from the state treasurer's office. If there is any continued difficulty, the Managing Partner will contact the state treasurer's office.
- The holder may attempt to limit/deny the auditor reasonable access to information needed to perform the audit. In this case, the auditor contacts the Managing Partner and if necessary he will contact the state treasurer's office.
- The holder may attempt to limit/deny the auditor reasonable access to holder's staff. In this case, the auditor contacts the Managing Partner and if necessary he will contact the state treasurer's office.
- In rare cases, the holder may threaten the auditor. In such case, the auditor is advised to vacate the premises immediately and contact the Managing Partner, who will contact the state treasurer's office.
- The holder may have filed for bankruptcy protection after the state treasurer's office ordered the audit. In such case, the Managing Partner contacts the state treasurer's office to determine whether the audit should proceed.
- The holder may have ceased to do business, merged with or been sold to another entity. In such case, the Managing Partner contacts the state treasurer's office to determine whether to audit the successor entity.

Other Issues:

In many cases part or all of the records may be missing/incomplete for specific periods of time. Additionally, the volume of records may necessitate the use of sampling. In these cases we will use estimation sampling to estimate the amount of unclaimed property. The audit steps for the particular property type would be modified to encompass sampling techniques.

In some audits, we may be able to download the holder's computer files and extract data from these files. In these cases, we will extract data with specific indicators (procedure codes, specific descriptions, etc) that are associated with unclaimed property. When warranted, we will use discovery sampling to determine which data elements indicate the existence of unclaimed property. These data elements can then be used in the data extraction process.

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:

As discussed in the preceding paragraph under 1.401, Issue Management, Tichenor has controls and processes in place in the contract administration and audit areas that greatly reduce the risk of the contract being mismanaged. Using the above processes and controls over the last five years under our current contract with Michigan's Department of Community Health, Tichenor has provided a quality, timely and within contract budget service. These same controls and processes will be implemented on any contract awarded Tichenor resulting from this Invitation to Bid.

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. **Vendors who provide products or services prior to the issuance of a Contract Change Notice by the DMB Office of Purchasing Operations, risk non-payment for the out-of-scope/pricing products and/or services.**

**Contractor Response to Task:**

Tichenor has the controls, processes and experienced personnel to successfully manage any changes that may result under the contract. Tichenor understands that if any changes are requested that are outside the scope of the contract, the Contract Compliance Inspector will initiate a Contract Change Request for submission to Treasury Purchasing. Tichenor understands that any change in specifications cannot commence without Treasury and Department of Management approvals.

1.5 Acceptance - Reserved1.6 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 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.

1.7 Additional Terms and Conditions Specific to this SOW - Reserved



Article 1, Attachment A

Pricing

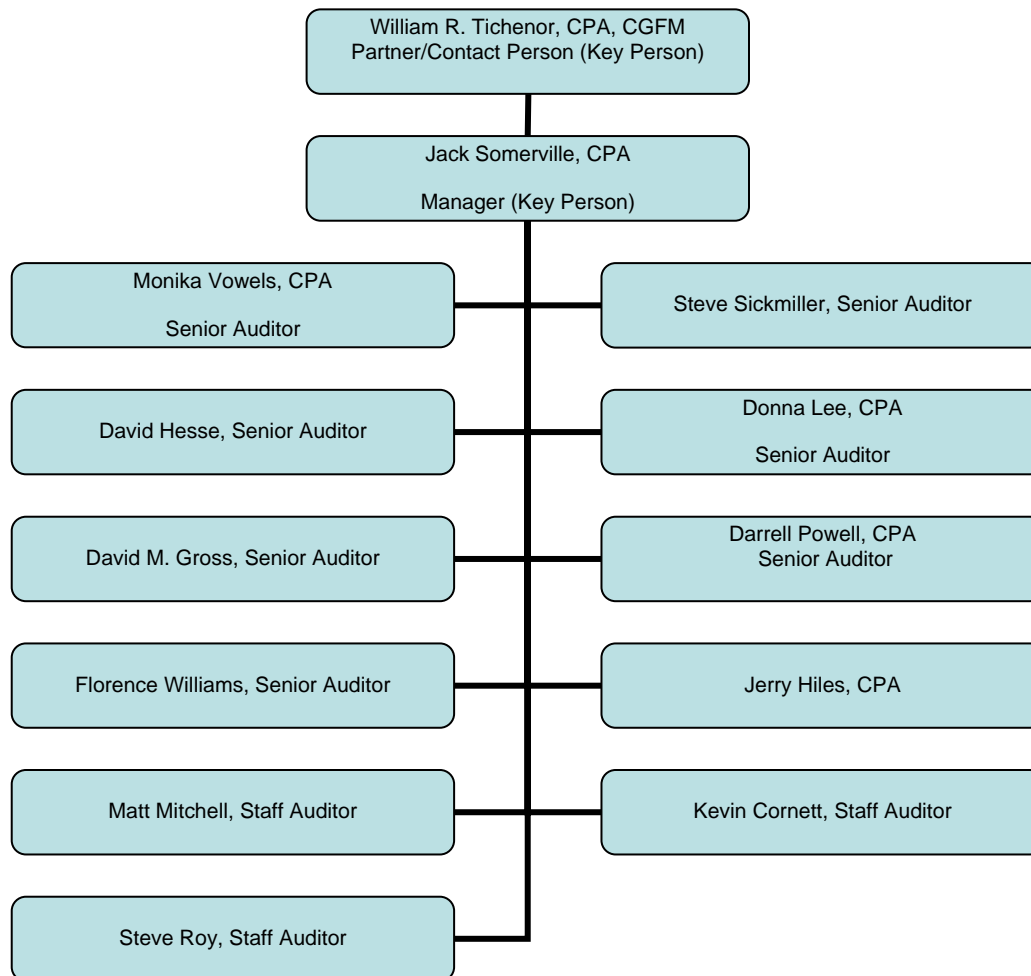
	Contingency			
	Fee		Quantity	Total
A. General Ledger Audit				
1. Value of Assets Remitted to State				
During Contract Period				
a. \$0-\$10,000,000	12%	x	\$ 10,000,000.00	\$1,200,000
b. \$10,000,000.01 to \$30,000,000	11%	x	\$ 30,000,000.00	\$3,300,000
c. \$30,000,000.01 to \$50,000,000	10%	x	\$ 50,000,000.00	\$5,000,000
d. \$50,000,000.01 or greater	8%	x	\$ 60,000,000.00	\$4,800,000
B. Securities Audit				
1. Value of Assets Remitted to State				
During Contract Period				
a. \$0-\$10,000,000	12%	x	\$ 10,000,000.00	\$1,200,000
b. \$10,000,000.01 to \$30,000,000	11%	x	\$ 30,000,000.00	\$3,300,000
c. \$30,000,000.01 to \$50,000,000	10%	x	\$ 50,000,000.00	\$5,000,000
d. \$50,000,000.01 or greater	8%	x	\$ 60,000,000.00	\$4,800,000
C. Contractor-Assisted Auditor				
1. Value of Assets Remitted to State				
During Contract Period				
a. \$0-\$10,000,000	12%	x	\$ 10,000,000.00	\$1,200,000
b. \$10,000,000.01 to \$30,000,000	11%	x	\$ 30,000,000.00	\$3,300,000
c. \$30,000,000.01 to \$50,000,000	10%	x	\$ 50,000,000.00	\$5,000,000
d. \$50,000,000.01 or greater	8%	x	\$ 60,000,000.00	\$4,800,000

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

**Article 1, Attachment B**

Organizational Chart, including Key Personnel

The following organization chart shows the proposed personnel to be used in successfully completing the performance of these audits.



All of the above key personnel have experience providing audit services to government agencies. They will be able to provide services under the audit scope and requirements in this Contract.

**Article 1, Attachment C**

Project Plan

Description of Methodology in Accomplishing Tasks

If awarded a contract under this ITB, Tichenor will apply the same methodology it currently employs in its contract with the West Virginia Office of the State Treasurer for unclaimed property auditing services. The time frames proposed are as follows:

Tichenor's audit program is designed to minimize the amount of state resources needed. Tichenor estimates that approximately **twenty (20) hours per month** of state resources will be required in the performance of a contract awarded under this ITB.

In particular, Tichenor will use the following methodology to accomplish the tasks:

- Select and advise the UPD on potential audit targets. To accomplish this task, Tichenor will perform an initial demographic or onsite review of holders' records to determine the amount of property likely to be reportable as unclaimed property.
- Perform field audit examinations within time frames allocated by the UPD.
- Determine, report, and collect all types of unclaimed property in holders' possession.
- Audit and process records of unclaimed property obtained from holders and/or their agents.
- Prepare and submit to the UPD reports of unclaimed property in accordance with Michigan law.
- Demand from holders and/or their agent's delivery to Tichenor, the property deemed owing under the Act. All securities delivered shall be properly endorsed and in form for transfer. Tichenor shall determine if the endorsement is in the proper form for transfer.
- Forward the unclaimed property to the UPD.
- If requested by the UPD, Tichenor will identify and collect any unclaimed property which would belong to another state, but would be collected by Michigan pursuant to any applicable NAUPA Exchange Agreement.

Performance Standards:

Tichenor will follow Generally Accepted Accounting Principles and Generally Accepted Auditing Standards in its identification of unclaimed property, processing of records, and demands for payment from holders.

The examination of the books and records of holders of unclaimed property, the identification of unclaimed property, the demand for delivery of unclaimed property, and the processing and reporting of unclaimed property will be made pursuant to the following:

- The holdings of the U.S. Supreme Court in *Texas v. New Jersey*, 85 S.Ct. 1136 (1965), *Pennsylvania v. New York*, 932 S.Ct. 2880 (1972), *Delaware v. New York*, 113 S.Ct. 1550 (1993);
- The provisions of the Michigan Unclaimed Property Act and its implementing regulations; and
- Auditing Guidelines adopted by the UPD.

Timeliness: Tichenor will schedule the assigned unclaimed property examination at a time mutually agreeable to the holder, but not later than ninety (90) days after notification of the assignment by the UPD. Tichenor will complete the examination and submit its report to the UPD within one year of the assignment.



Education of Holders: Tichenor will advise each holder of the statutory provisions for notifying owners of their property. Tichenor will notify the UPD if due diligence has not been carried out by the holder. Further, Tichenor will advise each holder of its continuing obligation to report property to the state. Tichenor will advise holders that all property reported and remitted must conform to the requirements of the Michigan Unclaimed Property Act.

Disputes by Holders: Tichenor will make no demand for remittance until the holder and Tichenor reconcile and agree upon the report to be filed with the UPD. If the holder and Tichenor do not agree on the report to be filed, the UPD will serve as arbitrator.

Out of Proof Reports: Out of proof reports are those in which inaccurate recordkeeping results in more accounts listed in the report than actual accounts exist, for which property is remitted to the UPD. Tichenor will inform the holder that out of proof reports will only be accepted if the holder prorates the report prior to submission to the UPD and only if allocated for each individual owner, in order to reconcile to the actual dollar and/or share amount submitted to the UPD. Out of proof reports will be accepted only with written assurances by holders that should all owners come forward, the holder will provide the balance due.

Tichenor Reports: Tichenor will report all unclaimed property to the UPD electronically using the NAUPA standardized unclaimed property reporting format. Tichenor will provide to the UPD in a comma delimited text electronic format monthly Work in Progress Reports which include the following information for each holder:

- Name of Holder
- State of Incorporation
- Federal Employer Identification Number
- Issue Name
- Property Type
- Engagement Date
- Status Commentary

In addition, Tichenor will provide the UPD with a Report of Unclaimed Property Examination for each holder audited. This report will include the following:

- Independent Accountant's Report;
- Schedule of Findings, which includes a summary of examination results, instances of noncompliance, and other comments;
- Statement of Examination Findings, which sets forth the amount currently reportable by property type, the amount future reportable by property type, and the total findings;
- Notes to the Statement of Examination Findings;
- History of the Holder and Its Operations; and
- Limited Procedures Performed, which sets forth in detail the examination procedures that were performed.



Collection and Disbursement of Unclaimed Property: Tichenor will cause all securities to be re-registered and delivered using Depository Trust Company (DTC) designations when applicable. For all securities that are not DTC eligible, Tichenor will cause them to be re-registered to the State Treasurer of Michigan and delivered in physical form to the UPD. All funds, securities, and other property constituting unclaimed property will be paid or delivered to the UPD. Delivery or payment is subsequent to the processing of holder's records and Tichenor's demand of report and payment or delivery. All funds, securities and other property will be segregated and securely maintained by Tichenor for a period not to exceed thirty (30) calendar days prior to disbursement to the UPD. Remittance documentation will indicate the date the property was received by Tichenor. The UPD will receive an interest credit from Tichenor equal to the interest earned on all cash funds held by Tichenor on behalf of the UPD from the date following the day the funds are paid in good funds to Tichenor until, but not including, the date such funds are remitted by Tichenor to the UPD.



Article 2 – General Terms and Conditions

Tichenor agrees to all Terms and Conditions contained in Article 2 of this Contract.

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.

Contractor Response:

ASUS acknowledges and concurs with the terms of this Section.

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.

Contractors Response:

ASUS acknowledges and concurs with the terms of this Section.

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: WilsonJ@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.

2.020 Contract Objectives/Scope/Background**2.021 Background - Reserved****2.022 Purpose**

See section 1.001.

2.023 Objectives and Scope

See sections 1.101 and 1.104.

2.024 Interpretation - Reserved**2.025 Form, Function and Utility**

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

2.030 Legal Effect and Term**2.031 Legal Effect**

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

2.032 Contract Term

This Contract is for a period of three (3) years. The anticipated Contract term is from March 1, 2007 through April 30, 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.

Contractor Response:

ASUS acknowledges and concurs with the terms of this Section.

2.033 Renewal(s)

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

Contractors Response:

ASUS acknowledges and concurs with the terms of this Section

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) **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.

(c) **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.

(d) **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.

(e) **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.

Contractors Response:

ASUS acknowledges and concurs with the terms of this Section

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/dit/service/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) - RESERVED

2.080 Delivery and Acceptance of Deliverables

2.081 Delivery Responsibilities

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

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

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

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



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

Contractors Response:

ASUS acknowledges and concurs with the terms of this Section

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 thirty (30) Business Days resubmit the Service in a form that shows all revisions made to the original version delivered to the State. Contractor's correction efforts will be made at no additional charge. Upon implementation of a corrected Service from Contractor, the State will have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Service for conformity and that the identified deficiencies have been corrected.

2.087 Process for Approval of Physical Deliverables - 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 forty-five (45) days after receipt, provided the State determines that the invoice was properly rendered.

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

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

(c) Out-of-Pocket Expenses

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

(d) Pro-ration

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

(e) Antitrust Assignment

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



(f) Final Payment

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

2.093 State Funding Obligation

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

Contractors Response:

ASUS acknowledges and concurs with the terms of this Section

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 sixty (60) days, updated semi-monthly) and (iii) graphs showing critical events, dependencies and decision points during the course of the Contract. Any tool(s) used by Contractor for such purposes must produce information of a type and in a manner and format that will support reporting in compliance with the State's standard to the extent such information is described with reasonable detail in the Statements of Work and to the extent the related work is of sufficient project complexity and duration to warrant such reporting.

2.110 Records and Inspections**2.111 Records and Inspections**

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

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

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

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

2.112 Errors

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

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

2.120 State Responsibilities**2.121 State Performance Obligations**

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



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

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

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

Contractors Response:

ASUS acknowledges and concurs with the terms of this Section

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/dit/service/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.

Contractors Response:

ASUS acknowledges and concurs with the terms of this Section

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.

Contractors Response:

ASUS acknowledges and concurs with the terms of this Section

**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.

2.164 Ownership of Materials

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

2.165 Standard Software – 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.
- (m) All written information furnished to the State by or behalf of Contractor in connection with this Contract, including its bid, is true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make such information not misleading.
- (n) It is not in material default or breach of any other contract or agreement that it may have with the State or any of its departments, commissions, boards, or agencies. Contractor further represents and warrants that it has not been a party to any contract with the State or any of its departments that was terminated by the State or such department within the previous five (5) years for the reason that Contractor failed to perform or otherwise breached an obligation of such contract.

2.172 Software Warranties - Reserved**2.173 Equipment Warranty - Reserved****2.174 Physical Media Warranty - Reserved****2.175 DISCLAIMER**

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



2.176 Consequences For Breach

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

2.180 Insurance

2.181 Liability Insurance

(a) Liability Insurance

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

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

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

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

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

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

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

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

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



- ☒ 1. Commercial General Liability with the following minimum coverage:

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

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSURED 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 INSURED 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 thirty (30) days written notice, the State may pay such premium or procure similar insurance coverage from another company or companies; and at the State's election, the State may deduct the entire cost (or part thereof) from any payment due Contractor, or Contractor shall pay the entire cost (or any part thereof) upon demand by the State.

2.190 Indemnification

2.191 Indemnification

(a) General Indemnification

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

(b) Code Indemnification

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

(c) Employee Indemnification

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

(d) Patent/Copyright Infringement Indemnification

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

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



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

2.192 Continuation of Indemnification Obligations

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

2.193 Indemnification Procedures

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

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

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

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

2.200 Limits of Liability and Excusable Failure**2.201 Limits of Liability**

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

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

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

2.202 Excusable Failure

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

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

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

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



2.203 Disaster Recovery

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

2.210 Termination/Cancellation by the State

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

2.211 Termination for Cause

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

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

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

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

2.212 Termination for Convenience

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

**2.213 Non-Appropriation**

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

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

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

2.214 Criminal Conviction

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

2.215 Approvals Rescinded

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

2.216 Rights and Obligations Upon Termination

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



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

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

2.217 Reservation of Rights

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

2.218 Contractor Transition Responsibilities

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

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

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

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

(e) Payment - If the transition results from a termination for any reason, reimbursement shall be governed by the termination provisions of this Contract. If the transition results from expiration, the Contractor will be reimbursed for all reasonable transition costs (i.e. costs incurred within the agreed period after contract expiration that result from transition operations). 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.

Contractors Response:

ASUS acknowledges and concurs with the terms of this Section

2.220 Termination by Contractor

2.221 Termination by Contractor

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

2.230 Stop Work

2.231 Stop Work Orders

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

2.232 Cancellation or Expiration of Stop Work Order

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

Contractors Response:

ASUS acknowledges and concurs with the terms of this Section

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 Reserved2.250 Dispute Resolution**2.251 In General**

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

2.252 Informal Dispute Resolution

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

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

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

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

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

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

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

2.253 Injunctive Relief

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

2.254 Continued Performance

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

2.260 Federal and State Contract Requirements**2.261 Nondiscrimination**

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

Contractors Response:

ASUS acknowledges and concurs with the terms of this Section

2.262 Unfair Labor Practices

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

2.263 Workplace Safety and Discriminatory Harassment

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

2.270 Litigation**2.271 Disclosure of Litigation**

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



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

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

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

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

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

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

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

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

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

2.272 Governing Law

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

2.273 Compliance with Laws

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

2.274 Jurisdiction

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

2.280 Environmental Provision

2.281 Environmental Provision - Reserved

2.290 General

2.291 Amendments

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

**2.292 Assignment**

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

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

2.293 Entire Contract; Order of Precedence

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

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

2.294 Headings

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

2.295 Relationship of the Parties (Independent Contractor Relationship)

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

2.296 Notices

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

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



Contractor(s):
Tichenor & Associates, LLP
2000 Town Center
Suite 1900
Southfield, MI 48075

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.

Contractors Response:

ASUS acknowledges and concurs with the terms of this Section

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 *Reserved*

2.320 *Extended Purchasing*

2.321 MiDEAL

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

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

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

2.322 RESERVED

2.330 *Federal Grant Requirements*

2.331 RESERVED