

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

**CHANGE NOTICE NO. 4**  
 to  
**CONTRACT NO. 071B7200342**  
 between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
RVK, Inc 1211 SW 5 <sup>th</sup> Ave., Suite 900 Portland, OR 97204	<b>Gayle Butcher</b>	<b>Gayle.Butcher@rvkuhns.com</b>
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(503) 802-6130	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	Treasury	Jon Braeutigam	(517) 373-0703	jbraeuti@invest.treas.state.mi.us
BUYER	DTMB	Lance Kingsbury	517-284-7017	kingsburyl@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: <b>Investment Consultant Services – Department of Treasury</b>			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
September 1, 2007	August 31, 2012	2 one-year	August 31, 2014
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS:			
N/A			

DESCRIPTION OF CHANGE NOTICE:				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	<input type="checkbox"/>	<input checked="" type="checkbox"/>	2 months	October 31, 2014
VALUE/COST OF CHANGE NOTICE:		ESTIMATED REVISED AGGREGATE CONTRACT VALUE:		
\$112,833.33		\$5,331,009.00		
Effective September 1, 2014, this contract is extended two months and is increased by \$112,833.33. The revised contract expiration date is October 31, 2014. All other terms, conditions, specifications and pricing remain the same. Per contractor and agency agreement, and DTMB Procurement approval.				

**STATE OF MICHIGAN**  
**DEPARTMENT OF TECHNOLOGY MANAGEMENT AND BUDGET**    September 1, 2011  
**PURCHASING OPERATIONS**  
 P.O. BOX 30026, LANSING, MI 48909  
 OR  
 530 W. ALLEGAN, LANSING, MI 48933

**CHANGE NOTICE NO. 3**  
**TO**  
**CONTRACT NO. 071B7200342**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF VENDOR		TELEPHONE (503) 802-6112
<b>R. V. Kuhns &amp; Associates, Inc.</b> <b>1000 SW Broadway, Suite 1680</b> <b>Portland, OR 97205-3035</b>  <b>allison.grebelee@rvkuhns.com</b>		<b>Allison Grebe Lee</b>
		VENDOR NUMBER/MAIL CODE
		BUYER/CA (517) 241-1916 <b>Jim Wilson</b>
Contract Compliance Inspector: Jon Braeutigam (517) 373-0703 <b>Investment Consultant Services – Department of Treasury</b>		
CONTRACT PERIOD: From: <b>September 1, 2007</b>		To: <b>August 31, 2014</b>
TERMS	<b>N/A</b>	SHIPMENT <b>N/A</b>
F.O.B.	<b>N/A</b>	SHIPPED FROM <b>N/A</b>
MINIMUM DELIVERY REQUIREMENTS <b>N/A</b>		

**NATURE OF CHANGE(S):**

Effective immediately, this contract is hereby **EXTENDED** two years to **August 31, 2014** and **INCREASED** by **\$1,800,000.00**.

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

**AUTHORITY/REASON:**

Per vendor agreement , DTMB/Purchasing Operations' approval and the approval of the State Administrative Board on August 30, 2011.

**INCREASE: \$1,800,000.00**

**TOTAL REVISED ESTIMATED CONTRACT VALUE: \$5,218,176.00**

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

October 27, 2009

CHANGE NOTICE NO. 2  
 TO  
 CONTRACT NO. 071B7200342  
 between  
 THE STATE OF MICHIGAN  
 and

NAME & ADDRESS OF VENDOR		TELEPHONE (503) 802-6112
<b>R. V. Kuhns &amp; Associates, Inc.</b> <b>1000 SW Broadway, Suite 1680</b> <b>Portland, OR 97205-3035</b>  <b>allison.grebelee@rvkuhns.com</b>		<b>Allison Grebe Lee</b>
		VENDOR NUMBER/MAIL CODE
		BUYER/CA (517) 241-1916 <b>Jim Wilson</b>
Contract Compliance Inspector: Jon Braeutigam (517) 373-0703 <b>Investment Consultant Services – Department of Treasury</b>		
CONTRACT PERIOD:		From: <b>September 1, 2007</b> To: <b>August 31, 2012</b>
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 September 1, 2009, the following amendments to the annual fee are hereby incorporated into this Contract:

- A. Year 3 - \$608,000.00
- B. Year 4 - \$640,000.00
- C. Year 5 - \$640,000.00

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

**AUTHORITY/REASON:**

Per vendor agreement (email dated 10/21/09), and DMB/Purchasing Operations' approval.

**CURRENT AUTHORIZED SPEND LIMIT REMAINS: \$3,418,176.00**

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

August 28, 2009

**CHANGE NOTICE NO. 1**  
**TO**  
**CONTRACT NO. 071B7200342**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF VENDOR  <b>R. V. Kuhns &amp; Associates, Inc.</b> <b>1000 SW Broadway, Suite 1680</b> <b>Portland, OR 97205-3035</b>  <p style="text-align: right;">allison.grebelee@rvkuhns.com</p>	TELEPHONE (503) 802-6112 <b>Allison Grebe Lee</b>
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-1916 <b>Jim Wilson</b>
Contract Compliance Inspector: Jon Braeutigam (517) 373-0703 <b>Investment Consultant Services – Department of Treasury</b>	
CONTRACT PERIOD: From: <b>September 1, 2007</b> To: <b>August 31, 2012</b>	
TERMS  <p style="text-align: center;">N/A</p>	SHIPMENT  <p style="text-align: center;">N/A</p>
F.O.B.  <p style="text-align: center;">N/A</p>	SHIPPED FROM  <p style="text-align: center;">N/A</p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	

**NATURE OF CHANGE(S):**

Effective immediately, the Contract Compliance Inspector is change to:

**Jon Braeutigam**  
**Department of Treasury**  
**(517) 373-0703**

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

**AUTHORITY/REASON:**

Per agency request and DMB/Purchasing Operations' approval.

**CURRENT AUTHORIZED SPEND LIMIT REMAINS:                      \$3,418,176.00**

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

**August 31, 2007**

**NOTICE  
 TO  
 CONTRACT NO. 071B7200342  
 between  
 THE STATE OF MICHIGAN  
 and**

NAME & ADDRESS OF VENDOR  <b>R. V. Kuhns &amp; Associates, Inc.          1000 SW Broadway, Suite 1680          Portland, OR 97205-3035</b>  <p style="text-align: right;">allison.grebelee@rvkuhns.com</p>	TELEPHONE (503) 802-6112 <b>Allison Grebe Lee</b> VENDOR NUMBER/MAIL CODE  BUYER/CA (517) 241-1916 <b>Jim Wilson</b>
Contract Compliance Inspector: Jacqueline Johnson <p style="text-align: center;"><b>Investment Consultant Services – Department of Treasury</b></p>	
CONTRACT PERIOD: From: <b>September 1, 2007</b> To: <b>August 31, 2012</b>	
TERMS  <p style="text-align: center;"><b>N/A</b></p>	SHIPMENT  <p style="text-align: center;"><b>N/A</b></p>
F.O.B.  <p style="text-align: center;"><b>N/A</b></p>	SHIPPED FROM  <p style="text-align: center;"><b>N/A</b></p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;"><b>N/A</b></p>	

The terms and conditions of this Contract are those of ITB #071I7200017, this Contract Agreement and the vendor's quote dated 11/27/2006. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.

**Estimated Contract Value: \$3,418,176.00**

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

**CONTRACT NO. 071B7200342**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF VENDOR  <b>R. V. Kuhns &amp; Associates, Inc.</b> <b>1000 SW Broadway, Suite 1680</b> <b>Portland, OR 97205-3035</b>  <p style="text-align: right;">allison.grebelee@rvkuhns.com</p>	TELEPHONE (503) 802-6112 <b>Allison Grebe Lee</b> VENDOR NUMBER/MAIL CODE  BUYER/CA (517) 241-1916 <b>Jim Wilson</b>
Contract Compliance Inspector: Jacqueline Johnson <p style="text-align: center;"><b>Investment Consultant Services – Department of Treasury</b></p>	
CONTRACT PERIOD: From: <b>September 1, 2007</b> To: <b>August 31, 2012</b>	
TERMS  <p style="text-align: center;"><b>N/A</b></p>	SHIPMENT  <p style="text-align: center;"><b>N/A</b></p>
F.O.B.  <p style="text-align: center;"><b>N/A</b></p>	SHIPPED FROM  <p style="text-align: center;"><b>N/A</b></p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;"><b>N/A</b></p>	
MISCELLANEOUS INFORMATION:  <p><b>The terms and conditions of this Contract are those of ITB #071I7200017, this Contract Agreement and the vendor's quote dated 11/27/2006. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.</b></p> <p><b>Estimated Contract Value: \$3,418,176.00</b></p>	

**THIS IS NOT AN ORDER:** This Contract Agreement is awarded on the basis of our inquiry bearing the ITB No. 071I7200017. Orders for delivery may be issued directly by the Department of Treasury through the issuance of a Purchase Order Form.

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

<p><b>FOR THE VENDOR:</b></p> <p style="text-align: center;"><b>R. V. Kuhns &amp; Associates, Inc.</b></p> <hr/> <p style="text-align: center;">Firm Name</p> <hr/> <p style="text-align: center;">Authorized Agent Signature</p> <hr/> <p style="text-align: center;">Authorized Agent (Print or Type)</p> <hr/> <p style="text-align: center;">Date</p>	<p><b>FOR THE STATE:</b></p> <hr/> <p style="text-align: center;">Signature</p> <p style="text-align: center;"><b>Kristi L. B. Thompson, Director</b></p> <hr/> <p style="text-align: center;">Name/Title</p> <p style="text-align: center;"><b>Services Division, Purchasing Operations</b></p> <hr/> <p style="text-align: center;">Division</p> <hr/> <p style="text-align: center;">Date</p>
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**STATE OF MICHIGAN**  
**Department of Management and Budget**  
**Purchasing Operations**

Contract No. 071B7200342  
Investment Consultant Services

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



## Article 1 – Statement of Work (SOW)

### 1.0 Project Identification

#### **1.001 PROJECT REQUEST**

The purpose of this Contract is to for investment consultant services. The objective of the consulting firm will be to assist the State Treasurer, as sole fiduciary of the State of Michigan Retirement Systems (SMRS), and the Director of the Bureau of Investments, as chief investment officer for the SMRS, and BOI staff in developing and carrying out investment policies that are designed to ensure that sufficient assets are available to meet current and future benefit obligations.

#### **1.002 BACKGROUND**

The SMRS are comprised of four (4) defined benefit retirement plans: Michigan Public School Employees (MPSERS), Michigan State Employees (MSERS), Michigan State Police (MSPRS) and Michigan Judges (MJRS) with a total market value on June 30, 2006, of \$53.6 billion for the benefit of approximately 575,000 participants. MPSERS and MSPRS are both open to new participants, while MSERS and MJRS are closed to new members. Assets are invested within the authority of Public Act 314 of 1965, as amended (Exhibit A). The State Treasurer, who is appointed by the Governor, is sole fiduciary of the SMRS which is overseen by a five-person Investment Advisory Committee comprised of governmental, economic and investment professionals (Exhibit B). The Bureau of Investments' staff assists the State Treasurer in his/her fiduciary responsibilities (Exhibit C) by managing the day-to-day operations. Approximately 90% of the assets are currently managed internally by BOI staff (Exhibit F) with the remainder managed externally. Real Estate and Alternative Investments are managed through various partnership agreements whereby the State Treasurer takes a limited partnership or other organizational interest.

As of June 30, 2006, assets for each of the plans were invested as follows:

(\$ in Millions)	<u>MPSERS</u>	<u>MSERS</u>	<u>MSPRS</u>	<u>MJRS</u>
Domestic Equities	\$19,621	\$4,954	\$551	\$139
International Equities	\$5,375	\$1,313	\$148	\$35
Alternatives	\$5,212	\$1,244	\$145	\$28
Real Estate	\$3,138	\$917	\$97	\$34
Fixed Income	\$6,695	\$1,696	\$187	\$50
Cash Equiv.	\$1,368	\$310	\$29	\$7
Tactical Assets	\$238	\$60	\$7	\$2

For a further breakdown among asset classes, please refer to Exhibit F.

### 1.1 Scope of Work and Deliverables

#### **1.101 IN SCOPE**

The selected investment consultant firm will provide investment consulting services to the SMRS/BOI and its staff to assist in the active and passive internal and external management of its assets. All services listed below shall be performed while exercising the standard of care described in Section 1B.101(c) of this Contract. These services shall be subject to reasonable deadlines established by the BOI Director and the requirements of Michigan statutes. In fulfilling this Contract, the consultant firm will be responsible to and take direction from the BOI Director and designated staff. The BOI will not provide workspace, furniture, computer terminal access or telephone services.



The scope of work will include both investment and economic research. The investment consultant firm will provide advice and assistance to the BOI on portfolio analysis, investment planning, asset allocation, investment manager selections and evaluations, recommendations on legislation and statutory changes, and other such related investment consulting services as requested by the BOI Director.

#### 1.102 OUT OF SCOPE -- Reserved

#### 1.103 ENVIRONMENT -- Reserved

#### 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:

##### A. Reporting

1. List all reports routinely provided to clients for this type of service. Describe and/or provide samples of reports that would meet the type of reporting described under Work and Deliverable.

##### Contractor Response to Task:

###### Performance Analysis

Our proprietary system allows us to customize each client's investment performance analysis report to fit its specific needs. The report generally begins with a review of the capital markets environment and then proceeds to an analysis of the total fund. The total fund is evaluated based on asset allocation relative to the strategic target, short- and long-term returns, and short- and long-term risk. A similar analysis of each asset class as a whole and each individual investment manager follows next. The objective of the performance analysis report is to explain why the fund might over or under perform in any given environment and to ensure investment managers are meeting expectations. Our reports also compare the client's portfolio performance to appropriate benchmarks and peer groups, and the report ranks the rates of return. Investment performance analysis reports are generally produced quarterly and presented to the client at quarterly or semi-annual meetings.

###### Monthly Flash Reports

RVK can provide clients with monthly asset allocation and performance flash reports. Flash reports are generally available 10 working days after the end of the month.

##### B. Services

1. Advise the BOI's Director and State Treasurer on investment guidelines and policies, including development of new guidelines and policies and amendment of existing ones.

##### Contractor Response to Task:

The investment policy describes the procedures and key strategies that the client will follow to manage the investment funds. The investment policy is a process-driven document that protects the interests of the beneficiaries of the investment funds and helps structure the work of the Plan's trustees, staff, and consultants. Should any governing agency audit the affairs of our clients this would be the first document reviewed, as it is an indication for how clients manage their funds. We believe the document should link policy to objectives.

We have detailed experience developing investment policies and objectives for our clients and believe that the development of an Investment Policy, Guidelines, and Objectives statement is one of the most important aspects of fiduciary responsibility.

We believe the statement should not only document investment goals and basic underlying strategies, but also direct a process for implementation. Accordingly, we spend considerable time with all our clients ensuring that policy guidelines are up-to-date, followed, and continue to serve the objectives of the organization.



RVK's first priority in designing investment policies is to work closely with the Board/Trustees and staff to develop a statement that focuses on the steps necessary to ensure that the policy meets the goals of the plan. Typical components include:

- Document history, structure, and mission
- Identify the responsible fiduciaries and spell out the sponsor's role
- Identify where responsibilities have been delegated and the terms guiding their execution
- Risk tolerance/posture
- Set investment performance objectives and risk parameters
- Determine performance measurement standards and establish an effective review procedure (i.e., benchmarks)
- Establish criteria for selection of investment managers
- Describe review process for all delegates including money managers, consultants, custodians, and so forth

RVK works with its clients to determine the appropriate legal framework under which our clients' investment decisions are to be analyzed. We perform this analysis as a component of the investment policy and governance review process of our initial work plan. Naturally, plan governance documents and legal regulations governing plan investments evolve over time, and we work together with investment staff to anticipate and proactively respond to any conflict that may arise. As a fiduciary to our clients, we provide additional verification that investments are made within the restrictions and parameters so established.

No one optimal portfolio will suit all clients; each has different criteria and goals. We believe a portfolio's overall structure should reflect consideration of the investor's fundamental needs and characteristics, including time horizon, the purpose of the investment program, risk tolerance, and return expectations. We also believe that an effective investment policy documents the core strategies and tenets adopted by the trustees and their delegates for executing the investment plan. Appropriate asset allocation is the key to obtaining satisfactory returns at a given risk and the guiding principle when structuring a portfolio.

A fundamental principal of our investment philosophy is that clients should set a long-term strategic asset allocation in the investment policy. With a firm strategic asset allocation, the disciplined investor with a long time horizon rebalances the portfolio back to the policy asset allocation when the investments receive additional cash flows or when the capital market shifts have affected the relative valuations.

The investment policy and asset allocation are generally reviewed every three years, and can be visited more regularly when there have been substantial changes in the client's investment objectives or within the capital markets. Reviewing these areas too frequently can result in a tactical approach to asset allocation, similar to market timing, and undermine the discipline needed to maintain a firm strategic asset allocation in the face of changing markets. Failing to review the asset allocation and investment policy on a regular basis can lead to a stale, poorly structured investment strategy and portfolio. We recommend that reviews address the investment policy and program from different vantage points. First, the total portfolio review is critical, since that reflects the behavior of the total portfolio, which is the key responsibility for trustees and their delegates. Second, we also recommend a more detailed review of sub-sectors of the portfolio (e.g., overall strategy, active/passive mix, benchmarks, manager structure, fees, and sector structure). We find that these periodic reviews not only refocus clients' attention to key elements of their portfolio, but they also serve to deepen the knowledge base of fiduciaries and their designees conferring a long-term benefit on the organization.

- 2. Assist in the continuing definition of management style(s) and structure and the accompanying disciplines that will be used in managing securities and portfolios and in developing the necessary procedures to ensure that staff can monitor and verify that the style(s) and disciplines are followed.**

**Contractor Response to Task:**

We monitor style consistency on a quarterly basis, using holdings-analysis and can provide return based style analysis upon request. MPI Stylus ("MPI) is a returns-based platform that allows RVK to track a manager's style by comparing the manager's (or mutual fund's) historical return stream to specific segments of the market. This process, known as Style Analysis, helps us to determine whether a manager is true to its stated investment style or if it is "drifting" to another style segment of the market. Style analysis is critical because style drift will defeat a plan's objective to offer a diversified menu of investment options. RVK also monitors compliance with the client's Investment Policy and Objectives statement through the Investment Policy Audit.

Each client's existing investment managers are subject to our ongoing due diligence process, which is as follows:

Performance Review

Through our performance measurement process, we evaluate each manager's experience using numerous analytical tools (e.g., portfolio characteristics, portfolio holdings, monitoring of philosophy, BARRA attribution, and so forth) on a quarterly basis.

Consistency Check

As your consultant, we prefer to be present when managers conduct their quarterly/annual meeting with you. This meeting allows us to prepare the trustees with any outstanding issues pertaining to the manager. It is also an opportunity for us to ask any questions we have of the manager. This process serves as a consistency check to ensure managers are communicating the same information to our clients and our firm.

In-house Meetings

On an ongoing basis, we meet with managers in our offices. We stress meetings with actual portfolio managers, rather than client service or marketing professionals.

Executive Leadership Team

Through our regular Executive Leadership Team meetings, all of our senior consultants have the opportunity to exchange information with regard to investment managers.

- 3. Assist the BOI Director with preparation of asset allocation studies. Provide advice and recommendations for formulating strategic investment policies for the plans and provide support as requested to accomplish implementation of such investment policies.**

**Contractor Response to Task:**

RVK employs a comprehensive methodology for evaluating a client's investment portfolio structure, mix and type of managers, and the optimal number of managers for a multi-billion dollar portfolio. We strive to aid our clients in creating an "efficient" investment portfolio (as defined by modern portfolio theory) to be that which achieves the highest level of return possible at a given level of risk, or the lowest possible risk for a given level of return. To achieve this optimal asset allocation, we use sophisticated software systems that analyze portfolios and build an efficient frontier using mean/variance optimization. We test these results with a Monte Carlo simulation based on our input assumptions for the expected return, risk, and correlation of asset classes.

Once this asset-allocation analysis is complete, we work with the client to determine which investment managers might best fulfill the asset-class mandates selected by the client. Our consultants, assisted by our manager research department, prepare manager search materials to evaluate investment managers that would be appropriate for these mandates. We concern ourselves with inter-asset class manager diversification and diversification by management company. The question of whether to employ multiple managers to manage assets for a given asset class depends on the characteristics of the asset class itself and the type of managers being considered. We have experience helping our clients create several types of manager structures within a single asset class. For example, within the large-cap U.S. equity arena, we have clients that employ a single core manager, diversified value and growth managers, an indexed core manager with concentrated value and growth managers, as well as several other manager structure options. To evaluate manager structure options, we employ holdings-based and returns-based style analysis both for individual managers and portfolios of managers within a given asset class. We are prepared to work with the client to determine which manager structure within a given asset class would best suit the client.



An initial asset allocation (AA) study is required as part of a new client initiative. Subsequently, AA studies are performed on a regular basis. Typically, our team will perform an AA study every time there is a consideration for introducing a new asset class into the existing portfolio as a means of diversification. Additionally, an AA study will be performed when significant changes in the market environment might require a change in the asset allocation.

RVK has extraordinary capabilities in asset allocation analysis and extensive experience in working with Boards to refine investment objectives, ensuring the portfolio's composition reflects those preferences. For example, our firm currently researches and maintains projected risk, return, and correlation projections on a lengthy list of candidate asset classes.

- 4. Provide advice as requested by the BOI Director on rebalancing policies, risk budgeting and risk management, portable alpha strategies, hedge fund strategies and currency overlay strategies.**

**Contractor Response to Task:**

Our role in rebalancing strategic asset allocation targets is two-sided. We begin with proactively assisting our client's staff in managing the strategic asset allocation guidelines. This initially involves the development of appropriate rebalancing guidelines in the investment policy statement. Rather than rebalancing on a time-related basis (i.e., monthly or quarterly), we prefer to use a percentage methodology.

We look at each asset class and determine the target and the minimum and maximum allocations. Anytime an asset category falls outside the minimum or maximum points, we may recommend rebalancing. For example, if a client's target allocation to domestic equities is 40%, its minimum is 37% and its maximum is 43%, we would recommend rebalancing any time the client's allocation falls outside the range of 37% to 43%. Asset classes with smaller percentage commitments would have a tighter range. This lends stability to the portfolio in times of volatile asset markets. Rebalancing in these markets can be done in conjunction with cash inflows and outflows to minimize costs. In those times where markets are relatively stable, this type of approach may not require any transactions at all. The rebalancing strategy is then brought down to a manager level using style optimization techniques. Our quarterly performance reports contain a section that analyzes whether the plan is in compliance with its strategic asset allocation guidelines.

RVK's risk control strategies begin with a "top down" approach focusing on risk preference setting for the entire portfolio in the context of its investment purpose. Using various tools such as asset allocation optimization, Monte Carlo analyses and risk budgeting, we review the risk associated with various portfolio structures and assist the client in matching risk to investment objectives to the risk preferences of the fiduciaries.

RVK, because of the firm's experience at the operational level, also engages in a "bottom up" risk control review that encompasses custodian use and performance standards, securities lending risk controls, derivatives exposure and compliance reporting, audit trails, manager contract reviews, and manager monitoring to reduce risks in every way possible.

RVK maintains research relationships with many of the leading fund of hedge fund managers. We have substantial experience providing educational reviews and due diligence to our clients in support of investment decisions for a diverse mix of absolute return strategies.

Portable alpha is a relatively new tool that is still in the early stages of development and deployment (though vendors selling the service will argue it is fully mature and ready to use widely throughout the plan sponsor population!) We could say much about portable alpha or alpha transport as it is sometimes called, but allow us here to make only a few brief points:



- a. First, portable alpha is a potentially powerful tool for concentrating fund assets almost exclusively on alpha search. This is done by replicating beta or asset class returns via one or more derivative strategies allowing the balance of fund assets to be applied to high conviction alpha opportunities. As such, portable alpha is a logical extension of more familiar alpha enhancement techniques such as the substitution of enhanced passive strategies for completely passive approaches; the allocation of appropriate portions of total fund assets to asset classes with higher alpha prospects such as domestic small cap, micro-cap, international equity, absolute return strategies, private equity, and so forth; and finally, the allocation of the majority of active risk in the portfolio to the asset classes believed to carry the highest prospect for alpha. Additionally, portable alpha carries the potential for either total investment management fee savings (because derivatives are generally inexpensive) or at least the opportunity to focus a much larger portion of total fees spent on the pursuit of alpha versus beta.
- b. Second, because of everything noted in the above-described paragraph, deployment of a portable alpha strategy is a logical consideration for an institution that has already demonstrated a continuing capacity to (1) locate alpha sources and select money managers who can harvest it, and (2) successfully implement the more traditional strategies of alpha maximization. Absent these two starting points, the portable alpha strategy will rest on weak foundations since both skills are necessary for a successful portable alpha program. It is important to remember that highly leveraging (not in the financial sense but in the asset allocation sense) the portfolio's assets toward potential alpha sources also means that poor execution (i.e., the production of negative alpha) will mean the total portfolio will likely under perform its policy benchmark.
- c. Third, implementation of a portable alpha strategy requires a series of steps, some of which not all plan sponsors are either skilled in or with which they are even comfortable. For example, the trustees must be conversant and comfortable with the cost and complexity of derivatives such as futures and total return swaps needed to execute a portable alpha strategy. The staff must be capable of executing these derivative trades on a regular basis or hire an overlay manager to do them.

The bottom line is that we believe the time to seriously consider a portable alpha program is when the objectives in number one above become enticing because the prerequisites for success in numbers two and three above are solidly in place.

RVK also monitors currency overlay managers on a regular basis and could provide the SMRS with advice on the implementation of these strategies as requested. In general, we believe the use of this as a total portfolio strategy requires:

1. High conviction that the overlay manager can dependably produce alpha;
2. That the overlay manager's currency bets be fully coordinated with the currency exposures generated throughout the remainder of the portfolio; and
3. That the performance cost (return/risk/correlation) of any restrictions placed on the managers in the fund to "export" available currency exposures to the overlay manager be more than outweighed by the benefits produced by the overlay strategy.

5. **Provide semi-annual written evaluation of performance of each portfolio manager, both internal and external, asset class and plan. The evaluation should include return attribution characteristics, risk analysis, style analysis, peer universe comparisons and holdings analysis relative to benchmarks. State Street Analytics will provide performance data.**

**Contractor Response to Task:**

In each of our performance reports we can provide the following qualitative information: a Global Market Commentary, an Executive Summary, an Investment Policy Review, and a Capital Markets Review. We provide a summary of market performance for the quarter, year-to-date, and five- and ten-year periods, including basic market indices. Equity, fixed income, international equity, and all other asset class information is included. Upon a client's request, each quarterly Investment Performance Analysis we deliver can include a one- to two-page Executive Summary. This summary includes a thorough review by your consultant of your investment performance provided in a condensed format. This summary has proven invaluable for Investment Committee members who only have time for a quick review, and it also helps brief the client about their performance prior to the consultant making a full presentation at the Investment Committee meeting.

In addition, we ensure that the performance reports are presented to the Board by the consultant on the account.

**6. Provide BOI with advice and assist in evaluation and selection of external managers. This includes, but is not limited to:**

(a) Monitoring SMRS' portfolio managers and providing semiannual (at a minimum) written performance analysis including evaluation of performance versus appropriate benchmarks and investment objectives as well as return attribution characteristics, style analysis and risk analysis. The managers currently under contract are listed in Exhibit D.

**Contractor Response to Task:**

RVK utilizes in-house performance monitoring and reporting tools to compute, track, and evaluate investment performance for our clients through our purchased software performance reporting system, PARis (Performance Analysis & Reporting Information System). This process involves collecting and inputting transaction and holdings data from investment managers and custodial banks, and then presenting performance versus appropriate indices, blended benchmarks, and peer groups.

Portfolios are valued at the end of each month based on the trustee's statements. RVK analysts receive monthly statements from the Plan's custodian bank and are responsible for inputting plan and investment manager data into our performance system so that a monthly return may be calculated. Concurrently, the analyst receives a monthly return directly from the investment manager.

Investment managers' performance returns are calculated using the Modified Dietz method, which is an ICFA recommended approximation of the time-weighted return daily valuation method. Performance, calculated by our system, is also reconciled to the records provided by custodial banks and investment managers. It is through this process that trained analysts bring portfolio anomalies to the primary consultant's attention for further review.

RVK provides performance reports that allow our clients to access and more fully understand the information central to their decisions and operations. Our portfolio analysis is designed to help our clients understand the reasons for over- or underperformance. We evaluate a manager's industry allocation compared to the market and portfolio characteristics to gain an understanding of manager skill. We have made efforts to make our report format easily understandable, yet sufficiently detailed to give our clients a clear picture of their absolute and relative performance.

Once performance is calculated, our system can compare each manager's performance to peer group universes, which is reflected in the client performance report. This is the only way to have a solid base from which to evaluate a client's managers. We spend considerable time ensuring that our universes are reliable and that the information is valid. RVK currently utilizes the Russell Mellon Trust Universe and the PARis Manager Style Universe for performance comparison and rankings.



PARis and the Russell Mellon Trust Universe allow firms, such as RVK, to examine investment information; comparing data by market sector, fund type, investment style, geographic location, fund size, and risk exposure. These platforms have the analytics and flexibility necessary to help clients assess the performance and risk levels of their funds. The data allows our firm to make comparisons based on broad criteria (such as sponsor and portfolio type) or on highly specific criteria (such as derivative exposure, risk postures, and investment strategies). Funds can be ranked against a universe of returns, asset allocations, and portfolio characteristics. Manager style comparisons are also available to provide insight into which investment managers comply with their clients' investment guidelines.

The contents of the Russell/Mellon Analytical Services database includes the following information:

Category	Plans	# of Plans	Assets
Master Trust Total Fund	All corporate, public plans, and foundations and endowments	504	All sizes
Master Trust Total Fund: \$1 billion	Corporate, public plans, and foundations and endowments	190	At least \$1 billion in assets
Total Funds: Public	All public plans	61	All sizes
Total Funds: Public, \$1 billion	Public plans	41	At least \$1 billion in assets
Total Funds: Corporate	All corporate defined benefit plan	265	All sizes
Total Funds: Corporate, \$1 billion	Corporate defined benefit plan	111	At least \$1 billion in assets
Total Funds: Corporate, \$250 million to \$1 billion	Corporate defined benefit plan	67	Assets between \$250 million and \$1 billion
Total Funds: Corporate, \$20 million to \$250 million	Corporate defined benefit plan	73	Assets between \$20 million and \$250 million
Total Funds Endowments & Foundations	All endowment and foundation plans	136	All sizes
Total Funds: Endowments & Foundations, \$1 billion	Endowment and foundation plans	37	At least \$1 billion in assets
Total Funds: Taft-Hartley	All Taft-Hartley funds	17	All sizes
Total Funds: Healthcare	All healthcare operation funds	17	All sizes

RVK is currently working on an initiative to provide all of our current performance reporting product in an electronic system that would also provide the features of daily performance and exposures. Clients will be able to download performance data and analysis directly from our website. Additional features we are pursuing include an on-line investment manager search system to allow clients to query quantitative and qualitative data for managers of interest represented by fund composites. Moreover, we are pursuing on-line news retrieval systems and private equity evaluation systems for inclusion in our system. Compliance and attribution products will be included.

(b) Providing annual analysis of portfolio managers' trading costs, including comparison of commission costs to peers and the marketplace, the relationship of each manager's commission costs to the quality of execution obtained, and the utilization of SMRS trading dollars for purposes other than execution such as the direct or indirect purchase of services or research.

**Contractor Response to Task:**

RVK assists our clients with the process of trade and foreign exchange cost management through expert counsel on the merits of using a variety of services available in the market targeted toward assisting with the identification of areas where best-execution was not achieved. These studies can include one-time trade-cost analyses or regular portfolio monitoring services. RVK believes that trading cost studies can provide valuable data on the trade execution abilities of a plan's investment managers. We have familiarity with the multiple methodologies currently in use in the marketplace and endeavor to remain in-line with new developments in the transaction cost analysis field.

(c) Providing advice and recommendations concerning investment manager probation and termination.

**Contractor Response to Task:**

The decision to recommend terminating a manager is often a difficult one. Ultimately, we believe that decision should rest on the determination as to whether the manager can and is likely to prospectively meet the client's expectations for that manager in the context of the overall portfolio strategy and the role played by that manager. RVK routinely works with the staff to address this key question, but will not hesitate to recommend termination if that test was not met.

(d) Providing advice and assistance as requested in investment manager selections, including preparation of RFIs, making selection recommendations, evaluating the qualifications of prospective managers, providing a list of recipients to receive the RFI, preparing background material for BOI staff, participating in the interview process if requested and assisting in contract negotiations if requested.

**Contractor Response to Task:**

RVK has significant expertise in assisting Plans in the selection of investment managers and in developing the necessary RFPs. The timeline, steps required, and consultant involvement necessary for the development of the RFP vary based on client preference; nevertheless, the process often proceeds as follows:

1. Initial review of RFP. This may involve full development or building off of existing RFP
2. Staff and RVK work to finalize RFP
3. Submission of RFP
4. Manager questions fielded by staff or RVK, depending on preference
5. Summary of responses provided by RVK
6. Initial review with RVK and staff
7. Manager follow up if required
8. Determination of semi-finalist or finalists candidates
9. Second round of finalists are reviewed and manager interviews with staff is conducted if necessary
10. Finalists interviews
11. On-site visits, follow up, and contract negotiation

For RFPs that are fully submitted to the public, we have successfully implemented a process that minimizes data gathering on the part of the staff. All client specific factors such as compliance with state regulations and client specific fees are specifically included in the RFP; managers are then asked to sign off on their full firm and product data submission to RVK's database provider, eVestment Alliance. Once the product is in the system, we can provide a fully tailored characteristic and performance review. The burden of developing firm and product questions is also removed from staff, as the eVestment Alliance database asks for an exhaustive list of details.

Once the investment managers are identified RVK would assist the plan in evaluating the various managers.

RVK often utilizes the following factors in its initial screening of managers:



**Screen Database by Asset Class (vary by asset class)**

- Equity - Weighted average market cap constraints
- Equity - Number of holdings greater than 30
- Fixed Income – Duration
- Fixed Income – Number of Issues greater than 40
- Fixed Income – Credit Quality constraints
- Manager stated style
- Manager stated capitalization style
- Five-year performance above Benchmark
- Five-year performance above median Universe
- Assets under management of firm
- Assets under management of product
- Key professionals working on the product for three years with no significant departures

Then, the firm reviews a secondary list as part of the screening criteria. Below is a list of some of the more critical areas of focus that are essential in the investment manager selection process:

**Firm**

- Errors and Omission insurance
- Firm Bonded
- CFA Institute (formerly AIMR) Compliant Level 1 or 2
- Understand any changes in ownership; both historical and projected
- Understand the history of the firm & founders
- Lawsuits or pending litigation – SEC investigations
- Has the firm ever had to utilize E&O insurance?

**Professionals**

- Stable Management Team
- Has the same team been involved with the product since inception?
- Have there been any significant departures?
- Does the management team have ownership in the firm?
- Review biographies of the management team including prior experience at quality firms as well as formal education
- Salary and incentive systems—Understand motivation for staying with firm
- Understand the structure of the management team
- Star system with analyst support
- Portfolio manager team members with equal roles
- If a research team supports the portfolio managers, what is the interaction between the two groups

**Performance**

- Consistency – rolling periods above benchmark and median
- Above median performance over market cycle
- Consistent with stated style
- Lower Volatility a plus
- Avoid products with one good year
- Avoid products with 4<sup>th</sup> quartile three-year return in rolling period analysis
- Track records less than five years are accepted only with mitigating circumstances
- Simulated returns are unacceptable

**Process**

- Research & management process must be well defined and consistently applied
- Understand the daily interaction between team members
- To what extent are models built internally
- Understand how the research is broken up between portfolio managers and analysts
- To what extent do the portfolio managers or analysts speak with company management, competitors, and suppliers?
- To what extent is external research utilized?
- Understand where the quantitative screens end and more rigorous fundamental research begin
- What quantitative and qualitative characteristics is the portfolio management team looking for? Do they match the stated style?
- Sell discipline should be clearly defined
- Does trading follow SEC guidelines for best price and execution?
- Does the investment manager trade through an affiliated broker?
- Are any portions of trades directed to a broker?

**Risk Control**

- Diversified portfolio, at least 35 securities
- No single security more than 7% of the portfolio
- Stated style and benchmark matches securities in portfolio (size and core/growth/value mix)
- Understand thresholds for sector or industry minimum or maximums

**Product**

- Vehicles available and minimums?
- Separate Management
- Commingled Fund? Limitations on client types?
- Mutual Fund? Are there institutional shares?
- Client List – does the manager have experience managing institutional assets?
- AUM – look for stable growth
- Review history of account termination

**Client Service**

- Understand the client service model for the investment manager?

**7. Provide assistance in searches and selections for custodian, securities lending agent, and other vendors as requested by the BOI Director.**

**Contractor Response to Task:**

Our clients often ask our firm to assist them with the evaluation of vendor services or to provide expert commentary on the services to be provided. We provide both of these types of services through our special projects area.

**Our Process:**

The custodial review and search process is driven by the accumulation of relevant and appropriately compared information upon which to base a selection and negotiation process. RVK has significant direct and indirect experience in the collection of such data as a result of our special project work and willingness to take on ad-hoc engagements for our retainer and project-consulting clients.

Typically we assist clients by helping them refine the list of required services they want from custodial providers, who will be invited to submit a response or elected to submit a response to an advertised search. The service requirements document is supplemented by various client-specific warranties of minimum qualifications and service offerings. The technical proposal, or services questionnaire, is then developed to incorporate both traditional differentiating questions and customized inquiries with requests of detailed proposals for meeting specific needs. We attempt to strike a balance between sufficient detail for prudent comparison and brevity/applicability of topics covered.



The data provided by custodial firms is then reviewed and verified by our consulting and analyst staff for both accuracy and responsiveness. RVK would provide a subjective review component, incorporating a qualitative evaluation of custodial services and capabilities together with a quantitative analysis of services offered and pricing, to accompany the tabular and graphical presentation of the quantitative results.

Price proposals are structured to complement the technical proposal. Typically, our firm seeks to evaluate the clients' sensitivity to fees and assesses the ability to adjust existing fee schedules to market rates (where beneficial). We have experience with creating both standard fee schedules as well as working with our clients and various providers to develop innovative structures.

We believe that an on-site review of custodial capabilities, performed in conjunction with evaluation of team members, is one of the most effective means of obtaining a mix of qualitative assessments and the verification of quantitatively measured service offerings. An introduction to the proposed service team is also highly useful. We have performed on-site reviews as engaged by clients and find that when done properly, such reviews provide valuable data and impressions to guide the evaluation committee or other selection body.

The findings and recommendations of the search process are then typically conveyed to the client through a written report and/or oral presentation as required.

Upon tentative selection (pending final contract negotiation), RVK works with clients to ensure that the contract fully provides for the service requirements as defined in the procurement document (or as further clarified formally at a later date). We seek to take client budgetary considerations and other client directions into account during fee negotiations to the best of the firm's abilities. Our firm has experience developing highly customized solutions to meet unique needs, particularly in the area of incentive and/or performance-linked compensation.

Should a custodial change be indicated, transition management assistance shall be provided to assist with the planning for, and implementation of, the transition from one custodial firm to another.

RVK has performed numerous custodial searches for many different client account structures (including defined contribution plans), and we would be honored to have the opportunity to assist the State of Michigan Retirement Systems (SMRS) in such an engagement. In addition, our firm has experience with and would be able to assist the SMRS on both a custodial and non-custodial (third-party) basis, and we have reviewed programs utilizing both agent lenders and principal borrowers. We have experience providing education on the risks and benefits of participating in such programs. Plan fiduciaries frequently call upon us to guide them in the strategic determination of whether or not to participate in such programs.

**8. Provide an independent alert to impending economic, market, geo-political or other pertinent risks that may affect the SMRS.**

**Contractor Response to Task:**

All of our consultants strive to keep abreast of regulatory changes and the effects they may have on our clients. This is primarily achieved through the regular review of periodicals and industry journals, attending industry conferences, and continuing education programs. Additionally, several members of our firm regularly attend Western Pension and Benefits conferences. Regulatory changes that affect the investment program of our clients are reported either via phone, e-mail, fax, or in person at client meetings.

In working with clients on asset allocation decisions and reviews, we routinely provide background materials on the historical performance of asset classes—returns, volatility, correlations, etc. This is done both at the staff level and at the trustee level as requested. Indeed, several clients have retained us to provide special global or domestic economic or capital markets commentary on specific topics on a regular basis. Please see **TAB 5** for two examples of our global commentaries.



- 9. Provide advice and assist the BOI in its compliance with federal and state statutes, regulations and guidelines, and provide recommendations on changes to State statutes.**

**Contractor Response to Task:**

Unique restrictions to public funds are the additional constraints that exist in each state's statutes (limitations on types of investment, legal structures, and so forth). Our approach to dealing with this has been a proactive one. In one state we were instrumental in getting new legislation introduced and passed that would allow the adoption of the prudent investor rule and subsequent investments in alternative investments. Over the years, we have developed standard language that we believe incorporates industry best practices for issues such as the use of derivatives, securities lending programs, and commission recapture.

Our firm has unusually extensive experience in dealing with legislative bodies and is prepared to undertake such efforts at the direction of the plan's trustees and staff. A few illustrations of that experience include:

1. One of RVK's lead consultants has worked extensively with the State of Wyoming, its State Treasurer, and members of the state legislature regarding legislative initiatives with significant consequences for the state's investment program. In this case, leading the RVK team, she not only prepared and delivered education sessions to the legislators and responded to questions, but also worked with the state to prepare materials related to these initiatives.
2. One of your proposed lead consultants on the RVK team has experience testifying before committees of the U.S. Senate and House of Representatives. In addition to representing the State's pension plan, he testified approximately 40 times before the Oregon Senate and House of Representatives, as well as simultaneously serving as the Executive Staff Director to both the Speakers' Pension Task Force and the Governor's Pension Task Force.
3. Currently, another member of your proposed RVK team is working with another western state in preparation for a potential statewide initiative that would substantially revise the constitutional basis underlying this state's investment program.

RVK works with its clients to determine the appropriate legal framework under which our clients' investment decisions are to be analyzed. This analysis is performed as a component of the investment policy and governance review process of our initial work plan. Naturally, plan governance documents and legal regulations governing plan investments evolve over time, and we work together with investment staff to anticipate and proactively respond to any conflict that may arise. As a fiduciary to our clients, we provide additional verification that investments are made within the restrictions and parameters so established.

- 10. Provide annually a written report on the state of investment markets, including a review of global financial markets, global geopolitical and macroeconomic factors affecting financial markets, and detailed relevant public and private equity, fixed income and real estate markets and sectors. Provide information, research and analysis related to emerging investment concepts, which may be of benefit to the SMRS/BOI and provide occasional special research and analysis on questions or issues that may arise.**

**Contractor Response to Task:**

Several clients have retained us to provide special global or domestic economic or capital markets commentary on specific topics on a regular basis. We would be happy to provide this service for the SMRS.

- 11. Prepare special analyses as requested by the BOI Director to define goals and objectives, monitor portfolio risk, or for other purposes deemed valuable to the BOI in the management of the SMRS.**

**Contractor Response to Task:**

RVK has executed numerous special projects for both our general retainer and special project public fund clients that have resulted in innovative and value-added solutions to each client's unique situation. The development of database tools, custom analyses, and benchmark studies (particularly in the alternative investment area) have been strong focus areas for the firm. These projects have created opportunities to go beyond the standard services provided by an investment consulting firm.



Increasingly clients have asked us to assist them in investment-related operational problems such as vendor management and strategic planning. The end-results of many of these projects have been so successful and well received by clients that RVK has dedicated significant resources toward broadening this effort through our Product Development division. Our products include a highly customizable and relevant peer comparison study for public funds, a custodial bank service delivery monitoring study and measurement tool, a multi-faceted review of the performance of and exposure to alternative investments such as private equity, and a real estate appraisal management and data-mining tool.

Below is a brief summary of some of the special analytical and operational projects we have executed for clients. They illustrate the broad capabilities that RVK brings to our firm's major business purpose--solving client problems.

<b>CalPERS</b>	Analysis of complex proposal to deploy an annuity-based investment strategy	<b>“Large Global Corporation”</b>	Special After Tax Asset Allocation Analysis for Finite Life Fund
<b>SBA: State of Florida</b>	Assessment of Derivatives Use and Exposure	<b>State of Wyoming (Full Retainer Client)</b>	DC Plan Fee Analysis
<b>CalPERS</b>	DB Custody services review and search; DC Bundled Provider Search	<b>Washington State Investment Board</b>	Comparative Analysis of Compensation
<b>Alaska Permanent Fund Corporation</b>	Asset Allocation Analysis of Prudent Investor Rule Adoption	<b>SBA: State of Florida</b>	DB & DC Custody services review and search
<b>SBA: State of Florida</b>	Strategic Planning Agenda, 2005 and Plan Strategic Planning Agenda, 2006	<b>Colorado PERA (Full Retainer Client)</b>	Allocation / Performance Reporting and Custom Benchmarking for Alternative Investments
<b>CalPERS</b>	Fiduciary / Board Reporting Research and Disclosure Document Creation	<b>Arizona State Retirement System</b>	Mid-cap Growth review and search
<b>Client “X” Full Retainer</b>	Due Diligence Analysis of a proposed direct investment in an asset management firm	<b>State of Montana Board of Investments</b>	Asset Liability Study Private Equity Pacing Study

**12. Provide up to two (2) staff educational or training workshops annually in the East Lansing area on issues designated by the BOI Director and/or recommended by the consultant firm.**

**Contractor Response to Task:**

RVK considers client education a key element of a productive consulting relationship. Our job as consultants is to provide information at all levels: to board trustees, investment committee members, staff, and plan participants. For example, our consultants have assisted many of our clients with customized educational forums and training workshops for their trustees, committee members, and staff. They have also frequently assisted staff in conducting educational seminars for plan participants.

All of RVK’s consultants are involved in any training conducted for our clients. All of the senior consultants at RVK have earned undergraduate degrees and have pursued numerous career-related post-graduate studies. Our senior professionals have extensive experience in the financial field, including investment advising, investment management, financial management, actuarial advisory services, and plan sponsor consulting.



The following list includes examples of educational topics we have conducted for our clients:

- The Prudent Investor Rule and Its Implications
- Alternative Assets
- Asset Allocation Concepts
- Asset Class Characteristics
- Manager Style Definitions and Review
- Manager Structure
- Elements of Investment Risk (i.e., liquidity risk, purchasing power risk, credit quality risk, asset allocation risk, etc.)
- The Role of and Rationale for International Equity
- Portfolio Theory
- Understanding Performance Measurement

**13. Attend up to four (4) Investment Advisory Committee meetings at BOI offices as requested.**

**Contractor Response to Task:**

Members of the proposed RVK consulting team will be available to attend up to four (4) Investment Advisory Committee meetings at BOI offices as requested.

**14. Maintain regular communications with the BOI Director, which would include frequent telephone consultations as well as regular on-site consultation and assistance as required by the consultant firm and/or BOI, in order to effectively accomplish all of the services required by this RFP.**

**Contractor Response to Task:**

We believe that clarity and timeliness in communication is critical to an effective working relationship with our clients; both characteristics are mutually beneficial to client and consultant. Given our belief in the team approach, we offer the client the ability to contact any advisory team member, and RVK will take responsibility for ensuring that the entire team is fully informed. Typically, it is optimal for the client to designate a lead contact and for RVK's lead consultant(s) to maintain direct contact with that individual on all important matters relating to policy, projects, key meetings, and significant issues.

It is commonplace, however, for information flows that are routine and regularly scheduled—such as monthly flash or final performance reports, status reports regarding ongoing projects, and so forth—to move directly from RVK staff to the designated individual(s) in the client's organization.

**15. Provide objective and creative input regarding investment plans to the BOI Director.**

**Contractor Response to Task:**

The RVK consulting philosophy is to provide long-term solutions to clients who entrust us with their futures and the futures of their employees. Our approach is client-specific and appropriately conservative. Our goal is to take our clients through a systematic process from the clarification of objectives, analysis of the total risk/return consequences of current and alternative strategies, to the coordination of any indicated changes. We strive to ensure that each of RVK client's investments achieve above-median performance over the long term and top quartile performance in a significant number of measurement periods.

Our philosophy relating to the consultants' relationship with the Board, staff, and money managers is best described below:

- We view our role as an extension of the finance staff of our client – your investment consulting staff down the hall.
- As your consultant/investment advisor, we view our role as being proactive with recommendations, rather than reactive with data gathering and sharing.
- In order for us to properly assess your investment managers, it is imperative that we sit on the same side of the table as our clients and have no conflicts of interest.



- We view our role also as a “facilitator of change” by continually making recommendations to improve the investment program. However, we also work with the staff and Board to stay focused on the activities and tasks to get the job done on behalf of our client.
- We view our role with investment managers as that of a “detective,” making certain the managers deliver the results promised to our client. We investigate to verify the performance numbers that managers are reporting are accurate and that there are no changes within their organizations, which may affect future performance. Our goal is to look for “red flags” that may affect future performance.

**1.2 Roles and Responsibilities**

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

Contractor must provide an account 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 section 1B.101(h).

**Contractor Response to Task:**

We believe it is important to assign clients a service team that specializes in that client's specific plan(s), as there are substantial differences between corporate plans, public plans, defined contribution plans, and so forth. When responding to a Request for Proposal, we design a service team composed of professionals having direct experience with your Plan's type. For the SMRS we have put together a Primary Consulting Team, comprised of four Senior Consultants, two Associate Consultants, and an Investment Analyst.

**Primary Consulting Team**

<b><i>Name &amp; Title</i></b>	<b><i>Email Address</i></b>
Rebecca A. Gratsinger, CFA – President, Chief Consulting Officer, Senior Consultant, Principal (Portland, Oregon office)	<a href="mailto:Becky.Gratsinger@rvkuhns.com">Becky.Gratsinger@rvkuhns.com</a>
Jim M. Voytko, MPA, MPP – President, Chief Operating Officer, Director of Research, Senior Consultant, Principal (Portland, Oregon office)	<a href="mailto:James.Voytko@rvkuhns.com">James.Voytko@rvkuhns.com</a>
Eric Tanaka, CFA, CPA – Senior Consultant (Seattle office)	<a href="mailto:Eric.Tanaka@rvkuhns.com">Eric.Tanaka@rvkuhns.com</a>
Jonathan Kowolik – Consultant, Principal (Portland, Oregon office)	<a href="mailto:Jonathan.Kowolik@rvkuhns.com">Jonathan.Kowolik@rvkuhns.com</a>
Jeremy Miller, MBA – Associate Consultant (Portland, Oregon Office)	<a href="mailto:Jeremy.Miller@rvkuhns.com">Jeremy.Miller@rvkuhns.com</a>
Beau Burggraff – Associate Consultant, Lead Associate Consultant for the SMRS Team. (Portland, Oregon Office)	<a href="mailto:Beau.Burggraff@rvkuhns.com">Beau.Burggraff@rvkuhns.com</a>

**Rebecca A. Gratsinger, CFA - President, Chief Consulting Officer, Senior Consultant, Principal, Co-leader of the SMRS team.**

Becky Gratsinger is President, Chief Consulting Officer, and a Senior Consultant with R.V. Kuhns & Associates, Inc. and is located in our Portland office. She joined the firm in 1994 and has 18 years of experience in investment consulting and capital markets. Becky's consulting experience has spanned all institutional client types including public funds, defined benefit, defined contribution, endowment/foundation, corporate reserve, insurance, and high net worth. Her client list includes some of the firm's largest clients. In addition to her consulting responsibilities, Becky participates in manager research, special projects, and conducts educational seminars. She has extensive experience developing investment policy statements, formulating asset allocations, and conducting other specialty provider searches.



Becky received her Bachelor of Science degree in Finance from Portland State University and holds the Chartered Financial Analyst designation. She is a member of the CFA Institute and a member of the Portland Society of Financial Analysts. Becky is a shareholder of the firm. Becky will likely take the lead in overall AA and real estate, ARS, and external domestic equity managers.

**Jim M. Voytko, MPA, MPP – President, Chief Operating Officer, Director of Research, Senior Consultant, Principal, Co-leader of the SMRS team.**

Jim is President, Chief Operating Officer, Director of Research, and a Senior Consultant with R.V. Kuhns & Associates, Inc. and is located in our Portland office. He joined the firm in 2004. Prior to joining RVK, Jim was the CEO/Executive Director of Oregon's statewide pension system for all employees of state and local governments, police and fire, teachers and higher education, statewide retiree health care insurance program, and statewide 457 deferred compensation program. Jim also served on the five member Oregon Investment Committee, which directed the investment of all statewide funds including the Oregon PERS pension fund and Oregon's 457 Plan. Jim's experience also includes serving as Director of Research for Paine Webber, CIO and Managing Director of PNC Asset Management Group/PNC Advisors, and the deputy director and Chief Operating Officer of PaineWebber's Investment Banking Division.

Jim holds a Bachelor of Arts from Carnegie Mellon University, a Master of Public Administration degree from the University of Washington, and Master of Public Policy degree from Harvard University. Jim is a shareholder of the firm. Jim will likely take the lead on all issues dealing with internal fund management, economic analysis, portfolio structure, international equity, and special projects.

**Eric Tanaka, CFA, CPA – Senior Consultant, Relationship and Workflow Manager for the SMRS Team**

Eric is a Senior Consultant and joined R.V. Kuhns & Associates, Inc. in 2006. Eric is located in our Seattle office. He has 17 years of experience in the health care industry where his most recent position was as the Vice President and Treasurer for The Regence Group. Within this role Eric was responsible for overseeing \$2.4 billion in investment assets and managed \$13 billion in cash flows. Additionally, he was responsible for monitoring and reviewing asset allocation, manager performance, and policy compliance, as well as reporting to the Board of Directors Investment Committee and the Retirement Trust Committee overseeing the Corporate DB and DC Plans. Other responsibilities included acting as the CFO responsible for GAAP and Statutory Financial statements, cash management, Board reporting, and leading a staff of 65.

Eric has a Bachelor of Arts degree from Western Washington University, is a CPA and a member of the CFA Institute and the Seattle Society of Financial Analysts. He also holds the Chartered Financial Analyst designation. Will in conjunction with Jim and Becky work on all projects but will also *likely* lead FI projects.

**Jonathan Kowolik – Consultant, Principal**

Jonathan Kowolik joined R.V. Kuhns & Associates, Inc. in 2001 and is located in the Portland office. Jonathan's primary responsibility is providing special project consulting support to our project consulting relationships. Engagements that Jonathan has performed include: custodial bank evaluations/searches, reviews of custodial bank service delivery, private equity benchmarking analysis, real estate appraisal process consulting, and board reporting research. Jonathan serves as a dedicated resource to many of our largest client relationships while also possessing a role within the general RVK team efforts. Prior to joining RVK, Jonathan worked for Merrill Lynch.

Jonathan received a Bachelor of Science in Economics with dual concentrations in Management and Finance from the Wharton School at the University of Pennsylvania. Jonathan is a shareholder of the firm. Jonathan will be responsible for private equity and other alternative assets for the SMRS team.



**Jeremy Miller, MBA – Associate Consultant**

Jeremy joined R.V. Kuhns & Associates, Inc. in 2006 as an Associate Consultant and is located in our Portland office. Jeremy's previous experience includes financial consulting work for a start-up company, Captus Inc., as well as for KPMG Consulting. As Vice President at Captus Inc., he was responsible for a variety of client projects including evaluating prospective investments and assisting with acquisitions and divestitures. Jeremy joined Captus Inc. from KPMG Consulting where he was a Consultant. There, he worked on a number of projects that included analyzing statistical models and performing valuations, in addition to a variety of other client responsibilities.

Jeremy earned his Bachelor of Science in Economics from Brigham Young University and his Master of Business Administration from the Yale School of Management. Jeremy would work with economic and fundamental research.

**Beau Burggraff – Associate Consultant, Lead Associate Consultant for the SMRS Team.**

Beau originally joined R.V. Kuhns & Associates, Inc. in 1998 as an Investment Analyst. Beau is located in our Portland office. He was promoted to Associate Consultant/Client Service Team Manager where he was responsible for managing the Client Service Team, presenting investment performance analysis and research to clients, as well as working as a team member on special projects and investment research. During the intervening two years between his departure from and return to RVK, Beau worked as a Senior Associate for Bates Private Capital where he managed and oversaw projects relating to NASD securities litigation and other retail brokerage matters.

Beau earned a Bachelor of Science degree in Accounting from Linfield College in 1995, and he is currently a Master of Business Administration candidate at the University of Portland. Responsible for project flow, searches, and performance reporting review for the SMRS team.

**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. 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:**

RVK is happy to carry out this project under the direction and control of the Contract Compliance Inspector and have a member of the proposed primary consulting team meet with the Inspector monthly or as requested. Within five (5) working days of the award of the Contract, RVK will submit to the Contract Compliance Inspector for final approval a work plan including the project organizational structure, a staffing table, and a project breakdown as stipulated above.



### 1.302 REPORTS

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 Contract Compliance Inspector; and notification of any significant deviation from previously agreed-upon work plans.

Draft preliminary reports shall be done as each task/deliverable is completed. A final report shall be generated 30 days after the Contract Compliance Inspector has reviewed all preliminary reports. The specific due dates will be negotiated between Investment Contractor and the Contract Compliance Inspector.

#### Contractor Response to Task:

We would be happy to provide brief monthly summaries of progress outlining 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 Contract Compliance Inspector; and notification of any significant deviation from previously agreed-upon work plans. We prepare full performance measurement reports for our clients on a quarterly basis, showing performances of the client's various portfolios, specific manager performance, and rankings. Data collection and the setting of the universe typically takes three to four weeks following the end of each period. As a result, our quarterly reports are generally available five to six weeks after a period ends. Monthly flash reports are available seven to ten days after the end of the month.

## 1.4 Project Management

### 1.401 ISSUE/RISK MANAGEMENT

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

#### Contractor Response to Task:

We believe that clarity and timeliness in communication is critical to an effective working relationship with our clients; both characteristics are mutually beneficial to client and consultant. Given our belief in the team approach, we offer the client the ability to contact any advisory team member, and RVK will take responsibility for ensuring that the entire team is fully informed. Typically, it is optimal for the client to designate a lead contact and for RVK's lead consultant(s) to maintain direct contact with that individual on all important matters relating to policy, projects, key meetings, and significant issues.

It is commonplace, however, for information flows that are routine and regularly scheduled—such as monthly flash or final performance reports, status reports regarding ongoing projects, and so forth—to move directly from RVK staff to the designated individual(s) in the client's organization.

2. 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:

RVK's risk control strategies begin with a "top down" approach focusing on risk preference setting for the entire portfolio in the context of its investment purpose. Using various tools such as asset allocation optimization, Monte Carlo analyses, and risk budgeting, we review the risk associated with various portfolio structures and assist clients in matching risk to investment objectives to the risk preferences of the fiduciaries.

RVK, because of its experience at the operational level, also engages in a "bottom up" risk control review that encompasses custodian use and performance standards, securities lending risk controls, derivatives exposure and compliance reporting, audit trails, manager contract reviews, and manager monitoring to reduce risks in every way possible.



1.5 Proposal Pricing

**1.501 PROPOSAL PRICING**

Payment/invoicing for this Contract will occur quarterly (see section 2.092).

- A. Provide the annual fee for all services described in section 1.104 to be provided by the firm. The quote should assume a five-year (5-year) contract and include all travel and other out-of-pocket expenses.**

**Contractor Response to Task:**

Our retainer covers virtually *all* proposed consulting services including travel. We typically do not itemize our fee or quote hourly rates for retainer clients because doing so could create a misalignment of consultant and client interests. Our general retainer fee is just that: It is designed to cover all investment consulting services our clients may need rather than providing RVK implicit incentives to perform more lucrative, fee-based services more often than necessary in order to generate additional revenue from the client. We believe that our comprehensive retainer fee policy simplifies the consulting relationship and allows for a more appropriate alignment of interests.

Our general retainer fee for all services would be an all-inclusive retainer of \$685,000 annually. This covers all proposed services, including travel. Reduced to \$640,000 annually during clarification questions.

Furthermore, our fee is guaranteed for three years, after which our fee would be adjusted annually by the lesser of 3% or the increase in the Consumer Price Index for the previous calendar year.

- B. List any additional services (optional) not listed in the fee proposal above that would incur additional fees as special or other services.**

**Contractor Response to Task:**

An exception to our general retainer policy is a request to execute a full system asset/liability study, which carries a separate, fixed fee of between \$30,000 and \$60,000, but may be less depending on benefits program complexity. Note that this fee does not included trade execution studies but assumes a specialist consultant will execute them. RVK's fee does however include evaluation, advice and selection of a trade execution specialist and assistance to the Michigan staff in monitoring and interpreting the results.

Proposal Pricing	RV Kuhns
Year 1	\$640,000
Year 2	\$640,000
Year 3	\$640,000
Year 4	\$659,200
Year 5	\$678,976
Full System Asset/Liability Study	\$160,000
5-Year Estimated Total Price	\$3,418,176
Notes:	Years 4 and 5 pricing are adjusted by lesser of 3% or CPI increase for previous year
	\$40,000/plan for full asset/liability study per clarification dated 1-19-07



1.7 Additional Terms and Conditions Specific to this SOW-

- 1. Please confirm your understanding that the State of Michigan has four (4) defined benefit retirement plans: Michigan Public School Employees, Michigan State Employees, Michigan State Police and Michigan Judges (section 1.002 of RFP); additionally, asset allocation studies, etc. will be performed for all plans and is included in your fee.**

RV Kuhns' Response:

We can confirm that we understand there are four separate plans and that our proposed full retainer fee covers periodic asset allocation studies for all plans at no additional cost. As for asset/liability studies, should RVK be chosen to work with SMRS as its general retainer consultant, we can confirm that a full asset/liability study for these plans would be capped at no more than \$40,000 per plan, regardless of benefit complexity. These studies would be executed by RVK's A/L team, led by our in-house actuary working in conjunction with the SMRS consulting team and the SMRS staff.

- 2. Please provide samples of the Monthly Flash Reports for asset allocation and performance (section 1.104.A.1, page 3.1).**

RV Kuhns' Response:

Please see TAB 3 for copies of two sample client flash reports.

- 3. Clients are assisted with trade/foreign exchange cost management processes through counsel on the merits of a variety of services available in the market for identification of areas where best-execution was not achieved (section 1.104.B.6.b, page 3.11). The retainer fee (section 1.501, pages 3.27-28) does not include "trade execution studies but assumes a specialist consultant will execute them. RVK's fee does however include evaluation, advice and selection of a trade execution specialist and assistance to the Michigan staff in monitoring and interpreting the results." What would the cost be for trade execution studies?**

RV Kuhns' Response:

There are a small, but well known, number of specialized trade execution analytics firms that provide some project-based or on-going evaluation of trade execution. These efforts vary in depth and breadth of transactions review, as well as whether they are "snap shot" or on-going reviews. Thus, the scope desired by SMRS will play a significant role in the cost of trade execution reviews. As noted, RVK will provide direct assistance to SMRS in defining scope, drafting RFPs or other solicitation documents, evaluating proposals, selecting trade execution specialists, monitoring task performance, and assisting with the interpretation of results. All of these activities are included within our general retainer proposal.

Indeed, this is also true of the solicitation, evaluation, selection, and monitoring of a wider array of plan vendors, including such areas as transition managers, custody, investment analytics, SRI screens, proxy services, and so forth. In each case, RVK intends, should we be selected as your general consultant, to act as an experienced extension of your staff resources in making sound and effective choices in these areas to ensure the best suite of services possible to the fund.

- 4. Special global or domestic economic or capital markets commentary on specific topics have been provided to several clients on a regular basis (section 1.104.B.10, page 3.18). Please confirm an annual written report on the state of investment markets will be provided per this section?**

RV Kuhns' Response:

We confirm that RVK will provide SMRS with an annually written report on the state of investment markets, including a general review of global financial markets, global geopolitical and macroeconomic factors affecting financial markets, and detailed relevant public and private equity, fixed income and real estate markets and sectors as we do for our other clients. Furthermore, we will provide information, research, and analysis related to emerging investment concepts, which may be of benefit to the SMRS/BOI and provide occasional special research and analysis on questions or issues that may arise.

- 5. Confirm up to two (2) educational or training workshops will be provided annually in the East Lansing area (section 1.104.B.12, page 3.19).**



RV Kuhns' Response:

RVK confirms that the consultants assigned to SMRS will provide up to two (2) educational or training workshops on an annual basis. The topics will be driven by a needs assessment by the Board of Investments and RVK if our firm is selected to be the consultant. Please see TAB 4 for a copy of our educational presentations and in-progress research materials, which would be available for SMRS and the BOI as part of RVK's consulting services.

- 6. A fixed fee between \$30,000 and \$60,000 was proposed for a full system asset/liability study; additionally, the cost could be less pending the benefits program complexity (section 1.501.B, page 3.28).**
- a. Please provide a firm, fixed fee for a full system asset/liability study on all four (4) defined benefit retirement plans (see above clarification #1).**

RV Kuhns' Response:

We can confirm that we understand there are four separate plans and that our proposed full retainer fee covers periodic asset allocation studies for all plans at no additional cost. As for asset/liability studies, should RVK be chosen to work with SMRS as its general retainer consultant, we can confirm that a full asset/liability study for these plans would be capped at no more than \$40,000 per plan, regardless of benefit complexity. These studies would be executed by RVK's A/L team, led by our in-house actuary working in conjunction with the SMRS consulting team and the SMRS staff.

- 7. What is your firm's 5-year plan for ownership and management of the firm (section 1B.101.f, g and I, pages 3.39-40)?**

RV Kuhns' Response:

During the next five years, we plan to continue to grow the business at a rate that is consistent with our past growth rate of approximately 10% per year. As stated in the RFP response, we have found that this controlled approach has allowed the firm to grow in a manner that does not jeopardize the quality of our consulting services we provide our clients. It is also our intent to continue to diversify the equity of the firm to include more key professionals including, over time, the next generation of investment talent as it is developing. A new round of equity distribution and a further broadening of the ownership pool took place in May 2006. Our firm plans to continue this format of growth and distribution while remaining a 100% employee-owned firm.

- 8. Please provide the performance of all your institutional clients with assets greater than \$10 billion versus their benchmark, their universe for one, three, five and ten years and their quartile rank for each period (section 1B.101.20, page 3.56)?**

RV Kuhns' Response:

We have included the track records of three of our large retainer institutional clients with assets in excess of \$10 billion. Please note that two of the three clients are relationships with approximately one year of RVK involvement. Also note that two of these three client accounts represent relationships in which our role is that of sole general consultant. Please see TAB 5 for copies of these total fund benchmark reports. For confidentiality purposes, we have removed the names of the clients and any other information that might violate our clients' best interests.

- 9. Within the first thirty (30) days of being awarded a new relationship, your firm sends information and a form packet inclusive of the proposed contract (section 1B.101.25, pages 3.70-71). Please clarify if the proposed contract includes terms/conditions in addition to the terms outlined in the RFP. If a standard agreement/contract from your firm is expected to be signed by the State of Michigan, please provide a copy now. If a contract should result from your proposal, the contract will encompass the RFP, proposal, clarifications, etc.**



RV Kuhns' Response:

Attached is a copy of our service agreement for your review. Often we work with clients who must incorporate their language into their contracts and vice versa. We would be pleased to assist SMRS with this aspect of client service through our Operations Department within the first 30 days. Our new client service packet includes not only the service agreement for your review, but also our "No-Conflict" policy statement, our firm organization chart, and sample letters for your managers to help us work with you. Please see TAB 6 for a copy of our service agreement materials.

**10. Rebecca A. Gratsinger and Jim M. Voytko were identified as co-lead consultants (section 1B.202, pages 3.74-78). Identify the estimated percent of time the co-lead consultants will be providing services to the State of Michigan (i.e. Rebecca A. Gratsinger 50% and Jim M. Voytko 50%, 60/40, etc.).**

RV Kuhns' Response:

We assume your question addresses how Ms. Gratsinger and Mr. Voytko will split the duties of lead consultant for SMRS should we be fortunate to have the opportunity to serve you. The short answer to this question is that over a several year period, it is likely that approximately 60% of the duties of lead consultant will be executed by Jim and approximately 40% by Becky. We base this estimation of the current composition of the SMRS fund and on other factors.

In practice, however, SMRS will far more often be working with Jim and Becky directly as a team with consulting services provided in a remarkably seamless fashion. Indeed, this is certain to be true on all major issues. As specific tasks and projects arise, Jim and Beck are likely to work with SMRS leadership and take direct responsibility for specific deliverables working with the rest of RVK's SMRS's team. This will be particularly true when SMRS wishes to move quickly ahead on concurrent tasks, for example. Jim (by contract with RVK) has a limitation on the number of clients he will consult to directly on an ongoing basis. RVK proposes that SMRS would be one of those clients. Becky, too, is increasingly focusing her efforts on a small number of large, complex clients. Again, RVK proposes that SMRS would be one of those clients.

RVK has more experience with successful team consulting than any consulting firm of which we are aware. The power of team consulting—executing the techniques and personnel used at RVK—is a major advance in the delivery of timely, high quality consulting service and particularly applicable to large funds with professional staffs.

**11. Technical staff turnover was listed around 20% since 2001 (section 1B.202.c, page 3.79). Identify the roles/responsibilities/job descriptions of technical staff.**

RV Kuhns' Response:

As an entry-level position within the firm, Investment Analysts (IAs) are part of the Client Service Team (CST). They are responsible for meeting specific client requests such as quarterly investment performance analyses, investment performance summaries, investment manager research, and/or special requests. IAs are requested to collect data, analyze returns, and communicate investment portfolio and composite results within RVK's standards.

Successful candidates for this entry-level, full-time position must have a degree in finance and/or a related field and must possess a strong grasp of financial concepts. Additionally, a solid understanding of trust accounting and/or general accounting is a must, as this will be necessary to resolve discrepancies between manager performance and universe calculated performance using custodian generated data. Capitalization-weighting, investment gain/loss, average time-weighted rate of return, internal rate of return, and linking returns are just a few examples of mathematical concepts with which the IA needs to be comfortable.

Since the IA position is an entry-level position within the firm, the 20% turnover referenced in this question is due to the fact that IAs who leave often do so to pursue master's degrees and CFA designations, which will enhance their future endeavors. While pursuing higher education and professional development are the two most common and largest reasons for turnover at this entry level technical position, family and other personal reasons are relatively common as well. Turnover among our mid-level and senior levels is dramatically lower. Please see TAB 7 for a graphic that shows how our IAs interact within CST and other parts of the firm.

**12. Clarify the purpose/reason for debt/Subordinated Borrowings of the firm (Tab 6).**

RV Kuhns' Response:

The debt and subordinated borrowings of the firm are a direct result of our need to meet the net capital requirements of the NASD as a broker dealer in a period of time where our business was growing and significant investments were made in personnel, technology, and research. The majority shareholder of the firm, Russ Kuhns, provided all capital for these cash infusions.

There are a couple of significant things to note with regard to this. Our firm was only a broker dealer in the context of an introducing broker for our commission recapture program. We terminated our commission recapture program in 2006 in favor of recommending that our clients participate in an even broader external program. Importantly, for the period of time we offered a commission recapture program, we avoided any potential conflicts by making sure that 100% of any recaptured commissions went directly to our clients and that the clearing firms wrote checks directly to our clients, not to our firm. We felt this was unique in an industry where many competitors derived additional revenue from these programs.

As we are no longer subject to the NASD net capital requirements, and as investments in the firm have yielded continual improvement in operating results, we have initiated a plan to remove all debt and subordinated borrowings and have already made significant progress.

**13. The State requested bidders to include a statement as to the period during which the proposal itself remains valid; additionally, this period must be at least 120 days from the due date for responses to this RFP (section 4.051 of RFP). The RFP process will take more than 120 days; consequently, will your firm allow the proposal to remain valid through October 1, 2007?**

RV Kuhns' Response:

Yes, RVK will allow the proposal to remain valid through October 1, 2007.



## Article 2 – General Terms and Conditions

### 2.010 Contract Structure and Administration

#### **2.011 Definitions**

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

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

#### **2.012 Attachments and Exhibits**

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

#### **2.013 Statements of Work**

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

(b) Unless otherwise agreed by the parties, each Statement of Work (as defined in Article 1) will include, or incorporate by reference to the appropriate Contract Article 1 Attachment containing, the following information:

- a description of the Services to be performed by Contractor under the Statement of Work;
- a project schedule (including the commencement and completion dates for all tasks, subtasks (for all projects of sufficient duration and complexity to warrant sub task breakdown), and Deliverables;



- a list of the Deliverables to be provided, if any, including any particular specifications and acceptance criteria for such Deliverables, and the dates on which the Deliverables are scheduled to be completed and delivered to the State;
  - all Deliverable price schedules and other charges associated with the Statement of Work, the overall fixed price for such Statement of Work and any other appropriate pricing and payment terms;
  - a specification of Contractor's and the State's respective performance responsibilities with respect to the performance or completion of all tasks, subtasks and Deliverables;
  - a listing of any Key Personnel of Contractor and/or its SubContractors for that Statement of Work and any future Statements of Work;
  - any other information or provisions the parties agree to include.
- (c) Reserved.
- (d) The initial Statements of Work, as of the Effective Date, are attached to this Contract.

## 2.014 Issuing Office

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

Jim Wilson  
Buyer  
Office of Purchasing Operations  
Department of Management and Budget  
Mason Bldg, 2nd Floor  
PO Box 30026  
Lansing, MI 48909  
Email: wisonj4@michigan.gov  
Phone: (517) 241-1916

## 2.015 Contract Compliance Inspector

Upon receipt at 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:

Jacqueline Johnson, Director and Deputy Treasurer  
Bureau of Investments (BOI)  
Michigan Department of Treasury  
P. O. Box 15128  
Lansing, MI 48901.

### 2.020 Contract Objectives/Scope/Background

## 2.021 Background

Reserved

## 2.022 Purpose

Reserved

**2.023 Objectives and Scope**

Reserved

**2.024 Interpretation**

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

**2.025 Form, Function and Utility**

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

2.030 Legal Effect and Term

**2.031 Legal Effect**

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

**2.032 Contract Term**

This Contract is for a period of five (5) years. All outstanding Purchase Orders shall also expire upon the termination (cancellation for any of the reasons listed in 2.210) of the Contract, unless otherwise extended pursuant to the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

**2.033 Renewal(s)**

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

2.040 Contractor Personnel

**2.041 Contractor Personnel**

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



- (b) Key Personnel
- (i) In discharging its obligations under this Contract, Contractor shall provide the named Key Personnel on the terms indicated. **Article 1, Attachment B** provides an organization chart showing the roles of certain Key Personnel, if any.
- (ii) Key Personnel shall be dedicated as defined in **Article 1, Attachment B** to the Project for its duration in the applicable Statement of Work with respect to other individuals designated as Key Personnel for that Statement of Work.
- (iii) The State will have the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the State of the proposed assignment, will introduce the individual to the appropriate State representatives, and will provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State will provide a written explanation including reasonable detail outlining the reasons for the rejection. Additionally, the State's request shall be based on legitimate, good faith reasons. Proposed alternative for the individual denied, shall be fully qualified for the position.
- (iv) Contractor shall not remove any Key Personnel from their assigned roles or the Contract without the prior written consent of the State. If the Contractor does remove Key Personnel without the prior written consent of the State, it shall be considered an unauthorized removal ("Unauthorized Removal"). It shall not be considered an Unauthorized Removal if Key Personnel must be replaced for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation or for cause termination of the Key Personnel's employment. It shall not be considered an Unauthorized Removal if Key Personnel must be replaced because of promotions or other job movements allowed by Contractor personnel policies or Collective Bargaining Agreement(s) as long as the State receives prior written notice before shadowing occurs and Contractor provides 30 days of shadowing unless parties agree to a different time period. The Contractor with the State shall review any Key Personnel replacements, and appropriate transition planning will be established. Any Unauthorized Removal may be considered by the State to be a material breach of the Contract, in respect of which the State may elect to exercise its rights under **Section 2.210**.
- (v) It is acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of the Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under **Section 2.210**, the State may assess liquidated damages against Contractor as specified below.
- (c) Re-assignment of non-Key Personnel. Prior to re-deploying to other projects, at the completion of their assigned tasks on the Project, teams of its non-Key Personnel who are performing Services on-site at State facilities or who are otherwise dedicated primarily to the Project, Contractor will give the State at least ten (10) Business Days notice of the proposed re-deployment to give the State an opportunity to object to the re-deployment if the State reasonably believes such team's Contract responsibilities are not likely to be completed and approved by the State prior to the proposed date of re-deployment.
- (d) Re-assignment of Personnel at the State's Request. The State reserves the right to require the removal from the Project of Contractor personnel found, in the judgment of the State, to be unacceptable. The State's request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good faith reasons. Replacement personnel for the removed person shall be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with removed personnel results in delay not reasonable/anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Service will not be counted in **Section 2.076** for a time as agreed to by the parties.



- (e) Staffing Levels.
- (i) All staff requirements not specified in the applicable Statement of Work or State-approved project plan as State personnel will be supplied by Contractor. This includes secretarial, clerical and Contract administration support staff necessary for Contractor to perform its obligations hereunder.
- (ii) Contractor shall provide sufficient personnel resources for the completion of Contract tasks indicated in Contractor's project plan approved by the State. If the level of personnel resources is insufficient to complete any Contractor Contract tasks in accordance with the Contract time schedule as demonstrated by Contractor's failure to meet mutually agreed to time schedules, Contractor shall promptly add additional qualified personnel resources to the performance of the affected tasks, at no additional charge to the State, in an amount sufficient to complete performance of Contractor's tasks in accordance with the Contract time schedule.
- (f) Personnel Turnover. The Parties agree that it is in their best interests to keep the turnover rate of employees of Contractor and its SubContractors who are performing the Services to a reasonable minimum. Accordingly, if the State determines that the turnover rate of such employees is excessive and so notifies Contractor, Contractor will meet with the State to discuss the reasons for the turnover rate and otherwise use commercially reasonable efforts to minimize such turnover rate. If requested to do so by the State, Contractor will submit to the State its proposals for reducing the turnover rate to an acceptable level. In any event, notwithstanding the turnover of personnel, Contractor remains obligated to perform the Services without degradation and in accordance with the State-approved Contract schedule.
- (g) Location. All staff assigned by Contractor to work on the Contract will perform their duties either primarily at Contractor's offices and facilities or at State facilities. Without limiting the generality of the foregoing, Key Personnel will, at a minimum, spend at least the amount of time on-site at State facilities as indicated in the applicable Statement of Work. Subject to availability, selected Contractor personnel may be assigned office space to be shared with State personnel.

#### **2.042 Contractor Identification**

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

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

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

#### **2.044 SubContracting by Contractor**

- (a) Contractor shall have full responsibility for the successful performance and completion of all of the Services and Deliverables. The State will consider Contractor to be the sole point of contact with regard to all Contractual matters under this Contract, including payment of any and all charges for Services and Deliverables.
- (b) Contractor shall not delegate any duties under this Contract to a SubContractor unless the Department of Management and Budget, Office of Purchasing Operations has given written consent to such delegation. The State shall have the right of prior written approval of all SubContractors and to require Contractor to replace any SubContractors found, in the reasonable judgment of the State, to be unacceptable. The State's request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good faith reasons. Replacement SubContractor(s) for the removed SubContractor shall be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed SubContractor, the State will agree to an equitable adjustment in schedule or other terms that may be affected by the State's required removal.



If any such incident with a removed SubContractor results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in **Section 2.076** for a time agreed upon by the parties.

(c) In any subContracts entered into by Contractor for the performance of the Services, Contractor shall require the SubContractor, to the extent of the Services to be performed by the SubContractor, to be bound to Contractor by the terms of this Contract and to assume toward Contractor all of the obligations and responsibilities that Contractor, by this Contract, assumes toward the State. The State reserves the right to receive copies of and review all subContracts, although Contractor may delete or mask any proprietary information, including pricing, contained in such Contracts before providing them to the State. The management of any SubContractor will be the responsibility of Contractor, and Contractor shall remain responsible for the performance of its SubContractors to the same extent as if Contractor had not subContracted such performance. Contractor shall make all payments to SubContractors or suppliers of Contractor. Except as otherwise agreed in writing by the State and Contractor, the State will not be obligated to direct payments for the Services other than to Contractor. The State's written approval of any SubContractor engaged by Contractor to perform any obligation under this Contract shall not relieve Contractor of any obligations or performance required under this Contract.

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

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

#### **2.045 Contractor Responsibility for Personnel**

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

#### 2.050 State Standards

#### **2.051 Existing Technology Standards**

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

#### **2.052 PM Methodology Standards**

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

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

#### **2.053 Adherence to Portal Technology Tools**

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

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

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



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

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

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

#### 2.060 Deliverables

#### **2.061 Ordering**

(a) Any Services/Deliverables to be furnished under this Contract shall be ordered by issuance of written Purchase Orders 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 Reserved**

#### **2.063 Reserved**

#### **2.064 Equipment to be New and Prohibited Products**

##### (a) Equipment to be New

If applicable, all equipment provided under this Contract by Contractor shall be new where Contractor has knowledge regarding whether the equipment is new or assembled from new or serviceable used parts that are like new in performance or has the option of selecting one or the other. Equipment that is assembled from new or serviceable used parts that are like new in performance is acceptable where Contractor does not have knowledge or the ability to select one or other, unless specifically agreed otherwise in writing by the State.

##### (b) Prohibited Products

The State will not accept salvage, distressed, outdated or discontinued merchandise. Shipping of such merchandise to any State agency, as a result of an order placed against the Contract, shall be considered default by the Contractor of the terms and conditions of the Contract and may result in cancellation of the Contract by the State. The brand and product number offered for all items shall remain consistent for the term of the Contract, unless Purchasing Operations has approved a change order pursuant to **Section 2.106**.

#### 2.070 Performance

#### **2.071 Performance, In General**

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

#### **2.072 Time of Performance**

(a) Contractor shall use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables in accordance with the time schedules contained in the Statements of Work and other Exhibits governing the work, and with professional quality.

(b) Without limiting the generality of **Section 2.072(a)**, Contractor shall notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and, in such event, shall inform the State of the projected actual delivery date.



(c) If Contractor believes that a delay in performance by the State has caused or will cause Contractor to be unable to perform its obligations in accordance with specified Contract time periods, Contractor shall notify the State in a timely manner and shall use commercially reasonable efforts to perform its obligations in accordance with such Contract time periods notwithstanding the State's failure. Contractor will not be in default for a delay in performance to the extent such delay is caused by the State.

#### **2.073 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 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 30 days of receipt, the cure for such damaged deliveries shall transfer to the delivery signing party.



## 2.082 Delivery of Deliverables

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

## 2.083 Testing

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

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

## 2.084 Approval of Deliverables, In General

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

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

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

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

(e) If, after three (3) opportunities (the original and two repeat efforts), Contractor is unable to correct all deficiencies preventing Final Acceptance of a Deliverable/Service, the State may: (i) demand that Contractor cure the failure and give Contractor additional time to cure the failure at the sole expense of Contractor; or (ii) keep the Contract in force and do, either itself or through other parties, whatever Contractor has failed to do, in which event Contractor shall bear any excess expenditure incurred by the State in so doing beyond the Contract price for such Deliverable/Service and will pay the State an additional sum equal to ten percent (10%) of such excess expenditure to cover the State's general expenses provided the State can furnish proof of such general expenses; or (iii) terminate the particular Statement of Work for default, either in whole or in part by notice to Contractor provided Contractor is unable to cure such breach.



Notwithstanding the foregoing, the State shall not use, as a basis for exercising its termination rights under this Section, deficiencies discovered in a repeat State Review Period that could reasonably have been discovered during a prior State Review Period.

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

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

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

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

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

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

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



## 2.088 Final Acceptance

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

### 2.090 Financial

## 2.091 Pricing

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

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

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

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

### (c) Services/Deliverables Covered

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

### (d) Reserved

## 2.092 Invoicing and Payment Procedures and Terms

### (a) Invoicing and Payment – In General

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

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

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

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

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

### (c) Out-of-Pocket Expenses

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

### (d) Pro-ration

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



(e) Antitrust Assignment

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

(f) Final Payment

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

### 2.093 State Funding Obligation

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

### 2.094 Reserved

### 2.095 Electronic Payment Availability

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

## 2.100 Contract Management

### 2.101 Contract Management Responsibility

(a) Contractor shall have overall responsibility for managing and successfully performing and completing the Services/Deliverables, subject to the overall direction and supervision of the State and with the participation and support of the State as specified in this Contract. Contractor's duties will include monitoring and reporting the State's performance of its participation and support responsibilities (as well as Contractor's own responsibilities) and providing timely notice to the State in Contractor's reasonable opinion if the State's failure to perform its responsibilities 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

The Contract and the applicable Statements of Work will govern problem Management and Contract Management procedures.

### 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 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 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 10%, then the Contractor shall pay all of the reasonable costs of the audit.

## 2.120 State Responsibilities

### **2.121 State Performance Obligations**

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



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

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

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

### 2.130 Security

#### **2.131 Background Checks**

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

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

### 2.140 Reserved

### 2.150 Confidentiality

#### **2.151 Freedom of Information**

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



### **2.152 Confidentiality**

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

### **2.153 Protection of Confidential Information**

The State and Contractor will each use at least the same degree of care to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication or dissemination of its own confidential information of like character, but in no event less than reasonable care. Neither Contractor nor the State will (i) make any use of the Confidential Information of the other except as contemplated by this Contract, (ii) acquire any right in or assert any lien against the Confidential Information of the other, or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information to the other party. Each party will limit disclosure of the other party's Confidential Information to employees and SubContractors who must have access in order to fulfill the purposes of this Contract. Disclosure to, and use by, a SubContractor is permissible where (A) use of a SubContractor is authorized under this Contract, (B) such disclosure is necessary or otherwise naturally occurs in connection with work that is within such SubContractor's scope of responsibility, and (C) Contractor obligates the SubContractor in a written Contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor and of any SubContractor having access or continued access to the State's Confidential Information may be required to execute an acknowledgment that the employee has been advised of Contractor's and the SubContractor's obligations under this Section and of the employee's obligation to Contractor or SubContractor, as the case may be, to protect such Confidential Information from unauthorized use or disclosure.

### **2.154 Exclusions**

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

### **2.155 No Implied Rights**

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



## 2.156 Remedies

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

## 2.157 Security Breach Notification

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

## 2.158 Survival

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

## 2.159 Destruction of Confidential Information

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

### 2.160 Proprietary Rights

#### 2.161 Reserved

#### 2.162 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**

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

**2.166 Pre-existing Materials for Custom Software Deliverables**

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

**2.167 General Skills**

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

2.170 Warranties And Representations**2.171 Warranties and Representations**

The Contractor represents and warrants:

- (a) It is capable in all respects of fulfilling and shall fulfill all of its obligations under this Contract. The performance of all obligations under this Contract shall be provided in a timely, professional, and workman-like manner and shall meet the performance and operational standards required under this Contract.
- (b) The Contract Appendices, Attachments and Exhibits identify the equipment and software and services necessary for the Deliverable(s) to perform and Services to operate in compliance with the Contract's requirements and other standards of performance.
- (c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by Contractor under this Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by Contractor to the State under this Contract, nor their use by the State, will infringe the patent, copyright, trade secret, or other proprietary rights of any third party.
- (d) If, under this Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to such items in this Contract, Contractor shall assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.
- (e) The Contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into this Contract, on behalf of Contractor.
- (f) It is qualified and registered to transact business in all locations where required.



(g) Neither the Contractor nor any Affiliates, nor any employee of either, has, shall have, or shall acquire, any Contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under this Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor shall notify the State within two (2) days of any such interest that may be incompatible with the interests of the State.

(h) Neither Contractor nor any Affiliates, nor any employee of either has accepted or shall accept anything of value based on an understanding that the actions of the Contractor or Affiliates or employee on behalf of the State would be influenced. Contractor shall not attempt to influence any State employee by the direct or indirect offer of anything of value.

(i) Neither Contractor nor any Affiliates, nor any employee of either has paid or agreed to pay any person, other than bona fide employees and consultants working solely for Contractor or such Affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.

(j) The prices proposed by Contractor were arrived at independently, without consultation, communication, or agreement with any other Contract for the purpose of restricting competition; the prices quoted were not knowingly disclosed by Contractor to any other Contract; 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 CONTRACT 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 has been no material adverse change in the business, properties, financial condition, or results of operations of Contractor.

(l) All written information furnished to the State by or behalf of Contractor in connection with this Contract, including its bid, is true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make such information not misleading.

(m) It is not in material default or breach of any other Contract or agreement that it may have with the State or any of its departments, commissions, boards, or agencies. Contractor further represents and warrants that it has not been a party to any Contract with the State or any of its departments that was terminated by the State or such department within the previous five (5) years for the reason that Contractor failed to perform or otherwise breached an obligation of such Contract.

#### **2.172 Reserved**

#### **2.173 Reserved**

#### **2.174 Reserved**

#### **2.175a DISCLAIMER**

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

#### **2.176 Consequences For Breach**

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



2.180 Insurance

**2.181 Liability Insurance**

(a) Liability Insurance

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

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

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

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

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

See [http://www.mi.gov/cis/0,1607,7-154-10555\\_22535---,00.html](http://www.mi.gov/cis/0,1607,7-154-10555_22535---,00.html).

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

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

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

1. Commercial General Liability with the following minimum coverage:

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

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



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

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

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

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

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

4. Employers liability insurance with the following minimum limits:

\$100,000 each accident

\$100,000 each employee by disease

\$500,000 aggregate disease

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

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

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

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

(b) SubContractors

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

(c) Certificates of Insurance and Other Requirements

Contractor shall furnish to the Office of Purchasing Operations certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor shall provide evidence that the State and its agents, officers and employees are listed as additional insured under each commercial general liability and commercial automobile liability policy.



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

Contractor shall maintain all required insurance coverage throughout the term of the Contract and any extensions thereto and, in the case of claims-made Commercial General Liability policies, shall secure tail coverage for at least three (3) years following the expiration or termination for any reason of this Contract. The minimum limits of coverage specified above are not intended, and shall not be construed, to limit any liability or indemnity of Contractor under this Contract to any indemnified party or other persons. Contractor shall be responsible for all deductibles with regard to such insurance. If Contractor fails to pay any premium for required insurance as specified in this Contract, or if any insurer cancels or significantly reduces any required insurance as specified in this Contract without the State's written consent, at the State's election (but without any obligation to do so) after the State has given Contractor at least 30 days written notice, the State may pay such premium or procure similar insurance coverage from another company or companies; and at the State's election, the State may deduct the entire cost (or part thereof) from any payment due Contractor, or Contractor shall pay the entire cost (or any part thereof) upon demand by the State.

### 2.190 Indemnification

#### **2.191 Indemnification**

##### (a) General Indemnification

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

##### (b) Code Indemnification

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

##### (c) Employee Indemnification

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

##### (d) Patent/Copyright Infringement Indemnification

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

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



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

### **2.192 Continuation of Indemnification Obligations**

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

### **2.193 Indemnification Procedures**

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

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

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

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



## 2.200 Limits of Liability and Excusable Failure

### **2.201 Limits of Liability**

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

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

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

### **2.202 Excusable Failure**

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

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

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

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



## 2.203 Disaster Recovery

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

### 2.210 Termination/Cancellation by the State

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

## 2.211 Termination for Cause

- (a) In the event that Contractor breaches any of its material duties or obligations under this Contract (including a Chronic Failure to meet any particular SLA as defined in **Section 2.076**), which are either not capable of or subject to being cured, or are not cured within the time period specified in the written notice of breach provided by the State (such time period not to be less than 30 days), or pose a serious and imminent threat to the health and safety of any person, or the imminent loss, damage or destruction of any real or tangible personal property, the State may, having provided written notice of termination to Contractor, terminate this Contract in whole or in part, for cause, as of the date specified in the notice of termination.
- (b) In the event that this Contract is terminated for cause, in addition to any legal remedies otherwise available to the State by law or equity, Contractor shall be responsible for all costs incurred by the State in terminating this Contract, including but not limited to, State administrative costs, reasonable attorneys' fees and court costs, and any reasonable additional costs the State may incur to procure the Services/Deliverables required by this Contract from other sources. Re-procurement costs shall not be considered by the parties to be consequential, indirect or incidental damages, and shall not be excluded by any other terms otherwise included in this Contract, provided such costs are not in excess of 50% more than the prices for such Service/Deliverables provided under this Contract.
- (c) In the event the State chooses to partially terminate this Contract for cause, charges payable under this Contract will be equitably adjusted to reflect those Services/Deliverables that are terminated and the State shall pay for all Services/Deliverables for which Final Acceptance has been granted provided up to the termination date. Services and related provisions of this Contract that are terminated for cause shall cease on the effective date of the termination.
- (d) In the event this Contract is terminated for cause pursuant to this Section, and it is determined, for any reason, that Contractor was not in breach of Contract pursuant to the provisions of this section, that termination for cause shall be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties shall be limited to that otherwise provided in this Contract for a termination for convenience.

## 2.212 Termination for Convenience

The State may terminate this Contract for its convenience, in whole or part, if the State determines that such a termination is in the State's best interest. Reasons for such termination shall be left to the sole discretion of the State and may include, but not necessarily be limited to (a) the State no longer needs the Services or products specified in the Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Services no longer practical or feasible, (c) unacceptable prices for Additional Services or New Work requested by the State, or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any CONTRACT 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 30 days advance written notice of termination for non-appropriation or unavailability (or such time as is available if the State receives notice of the final decision less than 30 days before the funding cutoff).
- (b) If funding for the Contract is reduced by law, or funds to pay Contractor for the agreed-to level of the Services or production of Deliverables to be provided by Contractor are not appropriated or otherwise made available, the State may, upon 30 days written notice to Contractor, reduce the level of the Services or the change the production of Deliverables in such manner and for such periods of time as the State may elect. The charges payable under this Contract will be equitably adjusted to reflect any equipment, services or commodities not provided by reason of such reduction.
- (c) In the event the State terminates this Contract, eliminates certain Deliverables, or reduces the level of Services to be provided by Contractor pursuant to this Section, the State shall pay Contractor for all Work-in-Process performed through the effective date of the termination or reduction in level, as the case may be and as determined by the State, to the extent funds are available. For the avoidance of doubt, this Section will not preclude Contractor from reducing or stopping Services/Deliverables and/or raising against the State in a court of competent jurisdiction, any claim for a shortfall in payment for Services performed or Deliverables finally accepted before the effective date of termination.

### 2.214 Criminal Conviction

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

### 2.215 Approvals Rescinded

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

### 2.216 Rights and Obligations Upon Termination

- (a) If this Contract is terminated by the State for any reason, Contractor shall (a) stop all work as specified in the notice of termination, (b) take any action that may be necessary, or that the State may direct, for preservation and protection of Deliverables or other property derived or resulting from this Contract that may be in Contractor's possession, (c) return all materials and property provided directly or indirectly to Contractor by any entity, agent or employee of the State, (d) in the event that the Contractor maintains title in Deliverables that is intended to be transferred to the State at the termination of the Contract, Contractor will transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables intended to be transferred to the State at the termination of the Contract and which are resulting from the Contract (which shall be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of such items included compensation to Contractor for the provision of warranty services in respect of such materials), and (e) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subContracts and outstanding orders for material and supplies resulting from the terminated Contract.
- (b) In the event the State terminates this Contract prior to its expiration for its own convenience, the State shall pay Contractor for all charges due for Services provided prior to the date of termination and, if applicable, as a separate item of payment pursuant to this Contract, for Work In Process, on a percentage of completion basis at the level of completion determined by the State. All completed or partially completed Deliverables prepared by Contractor pursuant to this Contract shall, at the option of the State, become the State's property, and Contractor shall be entitled to receive equitable fair compensation for such Deliverables. Regardless of the basis for the termination, the State shall not be obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.



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

### **2.217 Reservation of Rights**

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

### **2.218 Contractor Transition Responsibilities**

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

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

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

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

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

### **2.219 State Transition Responsibilities**

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

- (a) Reconciling all accounts between the State and the Contractor;
- (b) Completing any pending post-project reviews.

2.220 Termination by Contractor**2.221 Termination by Contractor**

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

2.230 Stop Work**2.231 Stop Work Orders**

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

**2.232 Cancellation or Expiration of Stop Work Order**

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

**2.233 Allowance of Contractor Costs**

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

2.240 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 60 calendar days, the Director of Purchasing Operations, DMB, or designee, shall issue a written opinion regarding the issue(s) in dispute within 30 calendar days. The opinion regarding the dispute shall be considered the State's final action and the exhaustion of administrative remedies.

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

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

### 2.253 Injunctive Relief

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

### 2.254 Continued Performance

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

#### 2.260 Federal and State Contract Requirements

### 2.261 Nondiscrimination

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



### 2.262 Unfair Labor Practices

Pursuant to 1980 PA 278, MCL 423.231, *et seq.*, the State shall not award a Contract or subContract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled pursuant to section 2 of the Act. The United States National Labor Relations Board compiles this information. 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 30 days of Contractor becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor shall notify the Office of Purchasing Operations.
- (2) Contractor shall also notify the Office of Purchasing Operations within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.



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

### 2.272 Governing Law

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

### 2.273 Compliance with Laws

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

### 2.274 Jurisdiction

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

### 2.280 Environmental Provision

#### 2.281 Environmental Provision

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

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

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

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



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

#### 2.290 General

#### **2.291 Amendments**

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

#### **2.292 Assignment**

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

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

#### **2.293 Entire Contract; Order of Precedence**

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

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

#### **2.294 Headings**

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

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

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

**2.296 Notices**

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

State:

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

Contractor(s):

RV Kuhns  
Attention: Allison Grebe Lee  
1000 SW Broadway, Suite 1680  
Portland, OR 97205-3035

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**

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

The Contractor, its subContractors, their subContractors, and all persons involved with the performance of this Contract in privity of Contract with the Contractor shall keep posted on the work site, in a conspicuous place, a copy of all wage rates and fringe benefits as prescribed in the Contract. You must also post, in a conspicuous place, the address and telephone number of the Michigan Department of Labor and Economic Development, the office responsible for enforcement of the wage rates and fringe benefits.



You shall keep an accurate record showing the name and occupation of the actual wage and benefits paid to each individual employed in connection with this Contract. This record shall be available to the State upon request for reasonable inspection.

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

### **2.307 Call Center Disclosure**

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

### **2.308 Future Bidding Preclusion**

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

2.310 Reserved

2.320 Extended Purchasing - Reserved

2.330 Federal Grant Requirements – Reserved



Exhibit A  
RESERVED

Exhibit B

Investment Advisory Committee Members  
Created Pursuant to P.A. 380 of 1965  
MCL 16.191

**David G. Sowerby, CFA**  
Chairperson of IAC  
Appointment expires 12-15-2008  
(Represents General Public)

**Robert E. Swaney, Jr.**  
Vice-Chairperson of IAC  
Appointment expires 12-15-2007  
(Represents General Public)

**Marina v.N. Whitman**  
(Appointment expires 12-15-2006  
(Represents General Public)

**Robert W. Swanson, Director**  
Dept. of Labor & Economic Growth  
(Serves by virtue of position.)

**Lisa Webb Sharpe, Director**  
Dept. of Management & Budget  
(Serves by virtue of position.)



Exhibit C

RESERVED



Exhibit D

EXTERNAL MANAGERS

Delaware Small Cap Growth  
Putnam Small Cap Growth  
Putnam Small Cap Value  
North Pointe Small Cap Value  
Fisher Small Cap Value

Wellington Management Mid Cap Core  
Alliance Bernstein Mid Cap Growth  
Putnam Mid Cap Growth  
Rainier Investment Management Mid Cap Growth  
UBS Global Asset Management Mid Cap Growth  
Wellington Management Mid Cap Growth  
Artisan Mid Cap Value  
Cramer Rosenthal McGlynn Mid Cap Value  
Los Angeles Capital Mid Cap Value

SSgA International Alpha Select BMI  
Alliance Bernstein International Style Blend

Alliance Capital U.S. Mid Cap Growth  
Putnam Mid Cap Growth  
Rainier Investment Management Mid Cap Growth  
UBS U.S. Mid Cap Growth  
Wellington Mid Cap Growth  
Wellington Trust International Research



Delaware Core Fixed Income  
Dodge & Cox Core Fixed Income  
DuPont Capital Core Fixed Income  
Fidelity Management Core Fixed Income  
Metropolitan West Core Fixed Income

Alliance Bernstein International Blend  
SSgA Global Developed Primary Index  
SSgA Europe Small Cap Index  
SSgA Pacific Small Cap Index  
Wellington International Research Equities



Exhibit E

INVESTMENT CONSULTANT WORKSHEET				
Money Management Firm Name				
	Cash	Brokerage	Cash	Brokerage
Client Directed Payments				
Products Purchased By Money Managers				
<b>Performance Measurement</b>				
<b>Marketing/Strategic Placement</b>				
<b>Educational Conferences</b>				
<b>Software</b>				
<b>Style Analysis</b>				
Non-Product Related Manager Payments				
Grand Total				



### Exhibit F

## State of Michigan Retirement Systems' Asset Allocation

As of June 30, 2006

(\$ in Millions)

	MPERS		MSERS		MSPRS		MJRS	
	MV	%	MV	%	MV	%	MV	%
Domestic Equity								
Active Large Cap Growth (I)	\$5,280	12.68%	\$1,335	12.72%	\$147	12.63%	\$37	12.54%
Active Large Cap Value (I)	\$5,381	12.92%	\$1,327	12.65%	\$148	12.71%	\$37	12.54%
Active Mid-Cap (E)	\$890	2.14%	\$230	2.19%	\$25	2.15%	\$7	2.37%
Active Small-Cap (E)	\$436	1.05%	\$111	1.06%	\$13	1.12%	\$3	1.02%
Domestic Equity Active Total	\$11,987	28.78%	\$3,003	28.62%	\$333	28.61%	\$84	28.47%
Domestic Equity Passive (I)	\$7,634	18.33%	\$1,951	18.59%	\$218	18.73%	\$55	18.64%
<b>Domestic Equity Total</b>	<b>\$19,621</b>	<b>47.11%</b>	<b>\$4,954</b>	<b>47.21%</b>	<b>\$551</b>	<b>47.34%</b>	<b>\$139</b>	<b>47.12%</b>
International Equity								
Passive (I)	\$4,649	11.16%	\$1,127	10.74%	\$128	11.00%	\$30	10.17%
Active (E)	\$726	1.74%	\$186	1.77%	\$20	1.72%	\$5	1.69%
<b>International Equity Total</b>	<b>\$5,375</b>	<b>12.91%</b>	<b>\$1,313</b>	<b>12.51%</b>	<b>\$148</b>	<b>12.71%</b>	<b>\$35</b>	<b>11.86%</b>
<b>Alternative Investments Total (I)/(E)</b>	<b>\$5,212</b>	<b>12.51%</b>	<b>\$1,244</b>	<b>11.85%</b>	<b>\$145</b>	<b>12.46%</b>	<b>\$28</b>	<b>9.49%</b>
<b>Real Estate Total (I)/(E)</b>	<b>\$3,138</b>	<b>7.53%</b>	<b>\$917</b>	<b>8.74%</b>	<b>\$97</b>	<b>8.33%</b>	<b>\$34</b>	<b>11.53%</b>
Fixed Income								
Governments (I)	\$3,346	8.03%	\$848	8.08%	\$93	7.99%	\$25	8.47%
Corporates (I)	\$2,961	7.11%	\$750	7.15%	\$83	7.13%	\$22	7.46%
Corporates (E)	\$388	0.93%	\$98	0.93%	\$11	0.95%	\$3	1.02%
<b>Fixed Income Total</b>	<b>\$6,695</b>	<b>16.08%</b>	<b>\$1,696</b>	<b>16.16%</b>	<b>\$187</b>	<b>16.07%</b>	<b>\$50</b>	<b>16.95%</b>



	MPSERS		MSERS		MSPRS		MJRS	
<b>Short Term Total (I)</b>	<b>\$1,368</b>	<b>3.28%</b>	<b>\$310</b>	<b>2.95%</b>	<b>\$29</b>	<b>2.49%</b>	<b>\$7</b>	<b>2.37%</b>
<b>Tactical Assets Total (I)</b>	<b>\$238</b>	<b>0.57%</b>	<b>\$60</b>	<b>0.57%</b>	<b>\$7</b>	<b>0.60%</b>	<b>\$2</b>	<b>0.68%</b>
<b>Total Market Value</b>	<b>\$41,647</b>	<b>100.00%</b>	<b>\$10,494</b>	<b>100.00%</b>	<b>\$1,164</b>	<b>100.00%</b>	<b>\$295</b>	<b>100.00%</b>

(I) = Internal Management (E) = External Management

Prepared By: Bureau of Investments, Michigan Department of Treasury

Updated: 8/2/06 2:58 PM

Printed: 8/14/06 3:46 PM



## **RVK Consulting Services for the State of Michigan Retirement System**

**Integrity    Capability    Client Service**

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### **Regular Services Provided by Primary Consulting Service Team**

- **Board Reporting**
- **Investment Policy Review for All Asset Classes**
- **Asset Allocation and Manager Structure Analysis**
- **Investment Manager Searches and Selection- All Asset Classes**
- **Performance Analysis/Monitoring/Attribution**
- **Recommendations for SMRS's Portfolio Structure**
- **Develop Policies and Procedures for the Investment Program**
- **Develop Recommendations for Alternative Investment Strategies**
- **Performance Reporting on Traditional and Alternative Asset Classes**
- **Client Education on Alternative Asset Classes**
- **Strategic Planning and SMRS Organizational Structure**



# RVK Consulting Services for the State of Michigan Retirement System

Integrity    Capability    Client Service

## Product Specialist Delivery Teams

- **Asset Allocation & Asset Liability Modeling**
  - Jim Voytko
  - Ashlee Moehring
- **Client Education on Alternative Strategies**
  - Becky Gratsinger
  - Jonathan Kowolik
  - Josh Kevan
- **Investment Manager Search/Selection/Due Diligence**
  - Sean Ealy
  - Jennifer Nichols
  - Todd Shupp
- **Capital Markets Research and Special Projects**
  - Jim Voytko
  - Jonathan Kowolik
- **Manager Structure Analysis**
  - Sean Ealy
  - Jennifer Nichols
  - Beau Burggraff
  - Stephen Petretto
  - Jake Kalina
- **Public Fund Performance Analysis “Best Practices”**
  - Russ Kuhns
  - Shannon Heim
- **Private Equity Research & Due Diligence**
  - Jonathan Kowolik
  - Steve Hahn
- **Absolute Return (Hedge Funds) Research**
  - Josh Kevan
- **Strategic Planning & Organizational Structure with Staff and Board**
  - Jim Voytko
  - Becky Gratsinger
- **Trustee & Legislative Body Issues Assistance**
  - Jim Voytko
  - Becky Gratsinger
  - Russ Kuhns



# RVK Consulting Services for the State of Michigan Retirement System

Integrity    Capability    Client Service

## Proposed Work Plan / Elements for Discussion

- **Investment Policy Review (2007)**
  - September:            **Initial Review and Discussion**
  - November:            **Recommendations**
  - January – June (08): **Implementation**

### RVK Personnel Assigned to Investment Policy Review

- Becky Gratsinger
- Jim Voytko
- Robert Palmeri
- Eric Tanaka

- **Asset Allocation & Asset Liability Modeling (2008)**
  - January:                **Initial Report and Discussion**
  - March:                 **Recommendations**
  - April – September: **Implementation**

### RVK Personnel Assigned to Asset Allocation & Asset Liability Modeling

- |                    |                    |
|--------------------|--------------------|
| • Russ Kuhns       | • Jonathan Kowolik |
| • Becky Gratsinger | • Beau Burggraff   |
| • Jim Voytko       | • Stephen Petretto |
| • Eric Tanaka      | • Jake Kalina      |



## RVK Consulting Services for the State of Michigan Retirement System

Integrity    Capability    Client Service

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### ➤ Client Education on Alternative Strategies (2007)

**October:**                    Education and Staff/Trustee Discussion

**November – December:** Decisions and Implementation

#### RVK Personnel Assigned to Client Education on Alternative Strategies

- Becky Gratsinger
- Jonathan Kowolik
- Josh Kevan

### ➤ Strategic Planning with Staff/Board (2007/2008)

**December (07):**            1 ½ to 2 day session

**January (08):**             Recommendations

**\*Feb – June (08):**        Implementation

\*Monthly meetings with Board/Staff as required in order to implement long-term strategic objective/goals/internal asset management/external asset management of the State of Michigan Retirement System. \*Special meetings as required.

#### RVK Personnel Assigned to Strategic Planning

- Jim Voytko
- Becky Gratsinger



## RVK Consulting Services for the State of Michigan Retirement System

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- **Investment Manager Due Diligence Reporting (2008 – Commensurate with Annual Asset Class Reviews by SMRS’s Staff)**  
Includes Written Performance Evaluation of Internal Portfolio Managers

- Domestic Equity
- Private Equity
- Fixed Income
- International Equity
- Real Estate

Note: Annual on-site, due diligence visits will be performed by RVK on all managers underperforming peers/benchmarks over the preceding three-year periods. Due diligence requests will be provided.

### RVK Personnel Assigned to Due Diligence

- Jim Voytko—Due Diligence Lead
- Sean Ealy—Domestic Equity
- Jennifer Nichols—Fixed Income
- Todd Shupp—International Equity
- Jonathan Kowolik—Private Equity

- **Large Public Fund Performance Analysis – Best Practices (2007)**

September:            Initial Presentation & Recommendations

November – December: Implementation

May (08):              Follow-up Presentation

### RVK Personnel Assigned to Large Public Fund Performance Analysis

- Russ Kuhns
- Jessica Reese

5

**RVKuhns**  
▶ ▶ ▶ & ASSOCIATES, INC.



# RVK Consulting Services for the State of Michigan Retirement System

Integrity    Capability    Client Service

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➤ **Manager Structure Analysis – Both Internal and External Managers**

**September (07): Initial Presentation & Recommendations**

**December (07): Implementation**

**January (08): Follow-up Presentation**

**RVK Personnel Assigned to Manager Structure Analysis**

- Sean Ealy
- Beau Burggraff
- Stephen Petretto
- Jake Kalina



# **RVK Consulting Services for the State of Michigan Retirement System**

**Integrity    Capability    Client Service**

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## **Additional RVK Services**

- **Defined Contribution & Deferred Compensation Reporting and Analysis**
  - Marcia Beard
- **Custodian Bank Search & Selection**
  - Jonathan Kowolik
- **Public Fund Staff Compensation Analysis**
  - Russ Kuhns
  - Shannon Heim
- **Private Equity Partnership Due Diligence Recommendation**
  - Jonathan Kowolik
  - Steve Hahn
- **Real Estate Reporting Analysis**
  - Jennifer Nichols
- **Trustee & Legislative Body Issues Assistance**
  - Jim Voytko
  - Becky Gratsinger
- **General & Specialized Manager Search Mandates**
  - Sean Ealy
  - Jennifer Nichols
  - Todd Shupp
- **Private Equity Reporting & Performance Measurement**
  - Jonathan Kowolik
  - Irina Doroshkin