

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

May 19, 2011

CHANGE NOTICE NO. 3
TO
CONTRACT NO. 071B8200176
between
THE STATE OF MICHIGAN
and

| | |
|--|---|
| NAME & ADDRESS OF CONTRACTOR Title Check, LLC 622 W. Kalamazoo Avenue Kalamazoo, MI 49007 martys@title-check.com | TELEPHONE (269) 226-2600 Martin Spaulding |
| | CONTRACTOR NUMBER/MAIL CODE |
| | BUYER/CA (517) 241-1916 Jim Wilson |
| Contract Compliance Inspector: Patricia Simon (517) 373-1252 Title Search and Tax Forfeiture Related Services – Department of Treasury | |
| CONTRACT PERIOD: From: July 1, 2008 To: July 31, 2016 | |
| TERMS N/A | SHIPMENT N/A |
| F.O.B. N/A | SHIPPED FROM N/A |
| MINIMUM DELIVERY REQUIREMENTS N/A | |

NATURE OF CHANGE(S):

Effective immediately, the address for the vendor is updated to the following:

Title Check, LLC
622 W. Kalamazoo Avenue
Kalamazoo, MI 49007

All other terms, conditions, and specifications remain unchanged.

AUTHORITY/REASON:

Per vendor request and DTMB/Purchasing Operations' approval.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$5,285,240.00

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

January 28, 2010

CHANGE NOTICE NO. 2
TO
CONTRACT NO. 071B8200176
between
THE STATE OF MICHIGAN
and

| | |
|---|---|
| NAME & ADDRESS OF CONTRACTOR Title Check, LLC 516 West South Street Kalamazoo, MI 49007-4645 martys@title-check.com | TELEPHONE (269) 226-2600 Martin Spaulding |
| | CONTRACTOR NUMBER/MAIL CODE |
| | BUYER/CA (517) 241-1916 Jim Wilson |
| Contract Compliance Inspector: Patricia Simon (517) 373-1252 Title Search and Tax Forfeiture Related Services – Department of Treasury | |
| CONTRACT PERIOD: From: July 1, 2008 To: July 31, 2016 | |
| 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 January 19, 2010, this Contract is hereby **EXTENDED** to July 31, 2016, and **INCREASED** by \$3,500,000.00.

Effective January 19, 2010 the pricing for this Contract is hereby **REDUCED** by 10%:

Article 1, Attachment A Pricing

| | Cost per Parcel (Non-recurring) | Cost Per Parcel (Recurring) |
|-------------------------|---------------------------------|-----------------------------|
| 1) 0 or Greater Parcels | \$108.00 | \$81.00 |

**** Pricing must be all inclusive ****

All other terms, conditions, and specifications remain unchanged.

AUTHORITY/REASON:

Per agency request (PRF dated 10/29/09), vendor agreement, Ad Board approval on January 19, 2010, and DMB/Purchasing Operations' approval.

REVIED CURRENT AUTHORIZED SPEND LIMIT: \$5,285,240.00

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

July 7, 2009

CHAGNE NOTICE NO. 1
 TO
 CONTRACT NO. 071B8200176
 between
 THE STATE OF MICHIGAN
 and

| | |
|---|---|
| NAME & ADDRESS OF CONTRACTOR Title Check, LLC 516 West South Street Kalamazoo, MI 49007-4645 martys@title-check.com | TELEPHONE (269) 226-2600 Martin Spaulding |
| | CONTRACTOR NUMBER/MAIL CODE |
| | BUYER/CA (517) 241-1916 Jim Wilson |
| Contract Compliance Inspector: Patricia Simon (517) 373-1252 Title Search and Tax Forfeiture Related Services – Department of Treasury | |
| CONTRACT PERIOD: From: July 1, 2008 To: July 31, 2011 | |
| TERMS N/A | SHIPMENT N/A |
| F.O.B. N/A | SHIPPED FROM N/A |
| MINIMUM DELIVERY REQUIREMENTS N/A | |

NATURE OF CHANGE(S):

The following language is hereby incorporated into this Contract:

Section 1.104.3.a: Add new subsection:

"When the interest holder is the Internal Revenue Services (IRS), the Contractor will enclose a copy of the IRS lien. This will assist in correctly identifying the party involved in the IRS lien, and each owner with an interest in the property will be considered properly noticed."

Section 1.601: Add new paragraph:

"The Michigan Department of Treasury will submit a per parcel credit request of \$90 or \$120 for those parcels which must be canceled due to improper notice by the Contractor. The credit request will be processed by the Contractor within 60 days of submission, and the credit request will be applied to the next applicable monthly invoice."

AUTHORITY/REASON:

Per agency request and DMB/Purchasing Operations' approval.

CURRENT AUTHORIZED SPEND LIMIT REMAINS: \$1,785,240.00

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

June 2, 2008

**NOTICE
 TO
 CONTRACT NO. 071B8200176
 between
 THE STATE OF MICHIGAN
 and**

| | |
|---|--|
| NAME & ADDRESS OF CONTRACTOR Title Check, LLC 516 West South Street Kalamazoo, MI 49007-4645 <p style="text-align: right;">martys@title-check.com</p> | TELEPHONE (269) 226-2600 Martin Spaulding CONTRACTOR NUMBER/MAIL CODE BUYER/CA (517) 241-1916 Jim Wilson |
| Contract Compliance Inspector: Patricia Simon (517) 373-1252 Title Search and Tax Forfeiture Related Services – Department of Treasury | |
| CONTRACT PERIOD: From: July 1, 2008 To: July 31, 2011 | |
| TERMS <p style="text-align: center;">N/A</p> | SHIPMENT <p style="text-align: center;">N/A</p> |
| F.O.B. <p style="text-align: center;">N/A</p> | SHIPPED FROM <p style="text-align: center;">N/A</p> |
| MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p> | |

The terms and conditions of this Contract are those of ITB #071I8200030, this Contract Agreement and the vendor's quote. 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.

Current Authorized Spend Limit: \$1,785,240.00

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. 071B8200176
between
THE STATE OF MICHIGAN
and

| | |
|---|--|
| NAME & ADDRESS OF CONTRACTOR Title Check, LLC 516 West South Street Kalamazoo, MI 49007-4645 <p style="text-align: right;">martys@title-check.com</p> | TELEPHONE (269) 226-2600 Martin Spaulding CONTRACTOR NUMBER/MAIL CODE BUYER/CA (517) 241-1916 Jim Wilson |
| Contract Compliance Inspector: Patricia Simon (517) 373-1252 Title Search and Tax Forfeiture Related Services – Department of Treasury | |
| CONTRACT PERIOD: From: July 1, 2008 To: July 31, 2011 | |
| TERMS <p style="text-align: center;">N/A</p> | SHIPMENT <p style="text-align: center;">N/A</p> |
| F.O.B. <p style="text-align: center;">N/A</p> | SHIPPED FROM <p style="text-align: center;">N/A</p> |
| MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p> | |
| MISCELLANEOUS INFORMATION: <p>The terms and conditions of this Contract are those of ITB #07118200030, this Contract Agreement and the vendor's quote. 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.</p> <p>Current Authorized Spend Limit: \$1,785,240.00</p> | |

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the ITB #07118200030. 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>FOR THE CONTRACTOR:</p> <p style="text-align: center;">Title Check, LLC</p> <hr/> <p style="text-align: center;">Firm Name</p> <hr/> <p style="text-align: center;">Authorized Agent Signature</p> <hr/> <p style="text-align: center;">Authorized Agent (Print or Type)</p> <hr/> <p style="text-align: center;">Date</p> | <p>FOR THE STATE:</p> <hr/> <p style="text-align: center;">Signature</p> <p style="text-align: center;">Melissa Castro, CPPB, Buyer Manager</p> <hr/> <p style="text-align: center;">Name/Title</p> <p style="text-align: center;">Services Division, Purchasing Operations</p> <hr/> <p style="text-align: center;">Division</p> <hr/> <p style="text-align: center;">Date</p> |
|---|--|



**STATE OF MICHIGAN
Department of Management and Budget
Purchasing Operations**

Contract No. 071B8200176
Title Search and Tax Forfeiture Related Services

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



Table of Contents

Article 1 - Statement of Work (SOW) 7

1.0 Project Identification 7

 1.001 PROJECT REQUEST 7

 1.002 BACKGROUND 7

1.1 Scope of Work and Deliverables 7

 1.101 IN SCOPE 7

 1.102 OUT OF SCOPE 7

 1.103 ENVIRONMENT 8

 1.104 WORK AND DELIVERABLE 8

1.2 Roles and Responsibilities 14

 1.201 CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES 14

 1.202 STATE STAFF, ROLES, AND RESPONSIBILITIES 15

 1.203 OTHER ROLES AND RESPONSIBILITIES 15

1.3 Project Plan 15

 1.301 PROJECT PLAN MANAGEMENT 15

 1.302 REPORTS 15

1.4 Project Management 15

 1.401 ISSUE MANAGEMENT 15

 1.402 RISK MANAGEMENT 16

 1.403 CHANGE MANAGEMENT 16

1.5 Acceptance 16

 1.501 CRITERIA 16

 1.502 FINAL ACCEPTANCE 16

1.6 Compensation and Payment 16

 1.601 COMPENSATION AND PAYMENT 16

1.7 Additional Terms and Conditions Specific to this SOW 17

 1.701 ADDITIONAL TERMS AND CONDITIONS SPECIFIC TO THIS SOW 17

Article 1, Attachment A 18

Article 1, Attachment B 19

Article 1, Attachment C 20

Article 2 – General Terms and Conditions 22

2.010 Contract Structure and Administration 22

 2.011 Definitions 22

 2.012 Attachments and Exhibits 22

 2.013 Statements of Work 22

 2.014 Issuing Office 23

 2.015 Contract Compliance Inspector 23

2.020 Contract Objectives/Scope/Background 23

 2.021 Background - Reserved 23

 2.022 Purpose - Reserved 23

 2.023 Objectives and Scope - Reserved 23

 2.024 Interpretation- Reserved 24

 2.025 Form, Function and Utility 24

2.030 Legal Effect and Term 24

 2.031 Legal Effect 24

 2.032 Contract Term 24

2.040 Contractor Personnel 24

 2.041 Contractor Personnel 24

 2.042 Contractor Identification 26

 2.043 Cooperation with Third Parties 26

 2.044 Subcontracting by Contractor 26

 2.045 Contractor Responsibility for Personnel 27

2.050 State Standards 27

 2.051 Existing Technology Standards 27

 2.052 PM Methodology Standards- Reserved 27

 2.053 Adherence to Portal Technology Tools 27

 2.054 Acceptable Use Policy 27



2.060 Deliverables 27

 2.061 Ordering 28

 2.062 Software - Reserved 28

 2.063 Hardware - Reserved 28

 2.064 Equipment to be New and Prohibited Products 28

2.070 Performance 28

 2.071 Performance, In General 28

 2.072 Time of Performance 28

 2.073 Liquidated Damages 28

 2.074 Bankruptcy 29

 2.075 Time is of the Essence 29

2.080 Delivery and Acceptance of Deliverables 29

 2.081 Delivery Responsibilities 29

 2.082 Delivery of Deliverables 30

 2.083 Testing- Reserved 30

 2.084 Approval of Deliverables, In General 30

 2.085 Process For Approval of Written Deliverables- Reserved 31

 2.086 Process for Approval of Services 31

 2.087 Process for Approval of Physical Deliverables- Reserved 31

 2.088 Final Acceptance 31

2.090 Financial 31

 2.091 Pricing 31

 2.092 Invoicing and Payment Procedures and Terms 32

 2.093 State Funding Obligation 32

 2.094 Holdback - Reserved 32

 2.095 Electronic Payment Availability 33

2.100 Contract Management 33

 2.101 Contract Management Responsibility 33

 2.102 Problem and Contract Management Procedures 33

 2.104 System Changes 34

 2.105 Reserved 34

 2.106 Change Requests 34

2.110 Records and Inspections 35

 2.111 Records and Inspections 35

 2.112 Errors 35

2.120 State Responsibilities 35

 2.121 State Performance Obligations 35

2.130 Security 36

 2.131 Background Checks 36

2.140 Reserved 36

2.150 Confidentiality 36

 2.151 Freedom of Information 36

 2.152 Confidentiality 36

 2.153 Protection of Confidential Information 37

 2.154 Exclusions 37

 2.155 No Implied Rights 37

 2.156 Remedies 37

 2.157 Security Breach Notification 37

 2.158 Survival 38

 2.159 Destruction of Confidential Information 38

2.160 Proprietary Rights 38

 2.163 Rights in Data 38

 2.164 Ownership of Materials 38

 2.165 Standard Software- Reserved 39

 2.166 Pre-existing Materials for Custom Software Deliverables- Reserved 39

 2.167 General Skills 39



2.170 Warranties And Representations 39

 2.171 Warranties and Representations 39

 2.175 DISCLAIMER- Reserved..... 40

 2.175 Standard Warranties- Reserved 40

 2.176 Consequences For Breach 40

2.180 Insurance..... 40

 2.181 Liability Insurance 40

2.190 Indemnification 43

 2.191 Indemnification 43

 2.192 Continuation of Indemnification Obligations 43

 2.193 Indemnification Procedures 44

2.200 Limits of Liability and Excusable Failure 44

 2.201 Limits of Liability 44

 2.202 Excusable Failure..... 45

 2.203 Disaster Recovery..... 45

2.210 Termination/Cancellation by the State 45

 2.211 Termination for Cause..... 45

 2.212 Termination for Convenience..... 46

 2.213 Non-Appropriation 46

 2.214 Criminal Conviction 47

 2.216 Rights and Obligations Upon Termination 47

 2.217 Reservation of Rights..... 47

 2.218 Contractor Transition Responsibilities 47

 2.219 State Transition Responsibilities 48

2.220 Termination by Contractor **Error! Bookmark not defined.**

 2.221 Termination by Contractor 48

2.230 Stop Work..... 48

 2.231 Stop Work Orders 48

 2.232 Cancellation or Expiration of Stop Work Order 49

 2.233 Allowance of Contractor Costs..... 49

2.240 Reserved 49

2.250 Dispute Resolution 49

 2.251 In General 49

 2.252 Informal Dispute Resolution..... 49

 2.253 Injunctive Relief..... 50

 2.254 Continued Performance 50

2.260 Federal and State Contract Requirements..... 50

 2.261 Nondiscrimination..... 50

 2.262 Unfair Labor Practices..... 50

 2.263 Workplace Safety and Discriminatory Harassment 50

2.270 Litigation 51

 2.271 Disclosure of Litigation 51

 2.272 Governing Law 51

 2.273 Compliance with Laws 51

 2.274 Jurisdiction 52

2.280 Environmental Provision..... 52

 2.281 Environmental Provision- Reserved..... 52

2.290 General..... 52

 2.291 Amendments 52

 2.292 Assignment 52

 2.293 Entire Contract; Order of Precedence..... 52

 2.294 Headings 52

 2.295 Relationship of the Parties (Independent Contractor Relationship)..... 52

 2.296 Notices 53

 2.297 Media Releases and Contract Distribution..... 53

 2.298 Reformation and Severability 53

 2.299 Consents and Approvals 53

2.300 No Waiver of Default 53

2.301 Survival 54



2.302 Covenant of Good Faith 54
2.303 Permits 54
2.304 Website Incorporation 54
2.305 Taxes..... 54
2.306 Prevailing Wage- Reserved 54
2.307 Call Center Disclosure 54
2.308 Future Bidding Preclusion 54
2.310 Reserved 54
2.320 Extended Purchasing 55
 2.321 MiDEAL- Reserved 55
2.330 Federal Grant Requirements- Reserved 55
Exhibit A 56
Exhibit B 57
Exhibit C 58
Exhibit D 59



Article 1 – Statement of Work (SOW)

1.0 Project Identification

1.001 PROJECT REQUEST

The purpose of this Contract is for Title Search/Tax Forfeited Property Services.

1.002 BACKGROUND

Tax-foreclosure is the process by which delinquent real property taxes are collected, or in lieu of collection, the process by which an owner of tax delinquent property is divested of title to the property due to the nonpayment of taxes. In Michigan, unpaid property taxes are returned delinquent each March 1 to county treasurers who are responsible for their collection. The Michigan Department of Treasury, Bureau of Local Government Services, has statutory responsibility for the administration of the tax-foreclosure process.

Public Act 123 of 1999, which took effect on October 1, 1999, substantially revised the tax-foreclosure process to render it less cumbersome and detrimental to economic development by reducing the amount of time necessary to return tax-foreclosed property to productive use and increasing the prospects of marketable title. Specifically, Act 123 shortened the tax-foreclosure process from six (6) years to three (3) years.

The tax-foreclosure process consists of three (3) phases: forfeiture, foreclosure, and sale. Forfeiture, which occurs 12 months after the date upon which taxes are returned delinquent, alters the legal status of tax delinquent property so as to permit foreclosure proceedings to be initiated in circuit court. The result of foreclosure will be to divest a tax-delinquent property owner of title, unless the property is redeemed through payment of the taxes due, and to vest title in either the State or in county treasurers for ultimate disposition through sale. A necessary element of the foreclosure process is conducting title searches for the purpose of identifying all parties having an interest in tax delinquent property which entitles them to due process notification.

The forfeiture phase of the tax foreclosure system is conducted by county treasurers. However, Act 123 authorized county treasurers to elect not to participate in the foreclosure and sale phases of the process. During the December of 2004 re-election window, the following 13 of the 83 counties in Michigan elected to have the State foreclose and sell their tax-delinquent property: Branch, Clinton, Dickinson, Eaton, Iosco, Iron, Kalamazoo, Kalkaska, Keweenaw, Livingston, Luce, Mecosta and Shiawassee. In 2007, these “opt out” counties forfeited 5,648 parcels, which required title searches and due process notification.

The Contractor must conduct exhaustive searches for any interest in the forfeited properties, including but not limited to IRS liens, various types of interest owned, such as a warranty deed, quit claim deed, land contract, non-discharged mortgages, etc. The Contractor will be supplied with a list of parcels forfeited for State foreclosure, in order to conduct record searches. The Contractor will also be required to provide due process notices associated to forfeited properties.

1.1 Scope of Work and Deliverables

1.101 IN SCOPE

The objective of the Department of Treasury is to have the Contractor, acting as the authorized representative of the State, perform the following:

1. Title searches for forfeited parcels in the counties for which the State is responsible for the foreclosure and sale of property
2. Provide the Department of Treasury with sufficient documentation to ensure that all statutory requirements have been satisfied (record searches)
3. Provide required due process notice to all owners of an interest in the properties and record relevant documents.

1.102 OUT OF SCOPE

Forfeiture and sale phases of tax foreclosure process are out of scope.



1.103 ENVIRONMENT

Information technology (IT) standards are referenced in section 2.051. The State's desktop suite standard is Microsoft Office (see policy 1310.22 [Desktop Suite Standard] at http://www.michigan.gov/dmb/0,1607,7-150-9131_9347-28166--,00.html). The State's database standard is at http://www.michigan.gov/dmb/0,1607,7-150-9131_9347-28196--,00.html (policy 1310.34 [Database Management Systems]).

1.104 WORK AND DELIVERABLE

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

1. Determine for each parcel of property which is contained on the list provided by the Department of Treasury whether any parcel of property has been redeemed at the office of the county treasurer between the date that the parcel of property forfeited to the county treasurer and the date upon which a title search for that particular parcel of property is to be conducted. A Contractor is not entitled to payment for having performed a title search for any parcel of property which is redeemed as provided in this subdivision. The Contractor is responsible for continuously monitoring the parcel of property to determine if it has been redeemed at the county level. Redemption status can be viewed on a department-maintained web page.

The Contractor will have existing daily communication channels open with the 13 Opt Out County Treasurer offices, and receive redemption reports regularly. In most cases this is a daily review during the entire forfeiture season. The State website is also monitored for items "pulled" by Treasury for various reasons.

All of Contractor's field examiners and in-house staffers check redemptions directly with the Treasurers office on a daily basis before beginning (or continuing) their current research projects. This prevents angry taxpayers and frustrated Treasurers .. especially at publication notice time.

Several times a season Contractor runs a "full compare" with each Treasurers office and manually check each others lists for not only redemptions, but also those parcels that have somehow been accidentally removed from forfeiture. These anomalies have occurred in the past from partial payments and other items which were incorrectly reported or interpreted. Running these occasional "full compare" reports not only keeps the redemption list current, it also assures that all parcels that should be in the process remain there.

In the past, the Contractor has fixed May 1 as the date when parcels still active, and not redeemed or on other administrative "hold" have been considered to have been undertaken.

The Contractor except from this threshold date circumstances (ie: Luce County, 2007 season) which give Contractor cause to correct them.

Another example of after-threshold credit was in 2002 when a substantial number of 2001 reversions found their way accidentally back into the new forfeiture list. The Contractor deleted these from the invoiced amounts and issued a credit for amounts paid to date against future invoices.

The Contractor is easily able to adjust this figure and give credits as necessary where circumstances suggest it.

Fixing a date eliminates substantial administrative burden in tracking thousands of individual files, and standardizes invoicing amounts for the annual term to eliminate the potential for later controversy, mistake, overcharge or underpayment. It also makes budgeting and projections easier for both parties.

Generally, most recent county land title records are locally computerized, and older records are in manual (often typewritten and bound) ledgers.

The Contractor's field examiners will typically run all files through the local computer databases preliminarily upon receipt, and those that are tracked to a certain Warranty Deed within that database are returned to Contractor quickly, pending further review of additional records which might be discovered as the season continues. Files with no recorded documents in the recent computer database are then tracked further back in the manual ledgers, requiring more time.



Therefore, Contractor feels that May 1 is a reasonable date to fix for a standard monthly invoicing amount in 1/12th increments

2. For each parcel of property which is contained on the list provided by the Department of Treasury under section 1.104.15 which is not redeemed as provided in section 1.104.1, conduct a 40-year title search to determine and document all of the following:
 - a. The current address of the property.

The Contractor incorporates (subject to correction from further research) any "property address" which is included in the delinquent assessment/tax roll provided to the State by the County Treasurers office.

Contractor has found substantial anomalies in these records in the past. Often the taxpayer home/billing address is duplicated in this field, and many other times the address is only approximate. (ie: "700 Main Street = on the 700 block of Main Street).

The Contractor will also review title documents for property address disclosure and include these where found to be reasonably certain.

The Contractor will include verified property addresses ascertained by the DNR during the property visit activity if these addresses were forwarded to Contractor.

- b. The name of each owner of an interest in the property who is entitled to notice of the judicial foreclosure hearing and the administrative show cause hearing. The owner of an interest in the property is entitled to notice if the interest of the owner was identifiable by reference to any of the following sources before the date upon which the county treasurer recorded a forfeiture certificate for the parcel of property:
 - (i) Records in the office of the county register of deeds, including, but not limited to, tracked index, IRS liens and mineral interest.
 - (ii) Tax records in the office of the county treasurer.
 - (iii) Records in the office of the local assessor.
 - (iv) Records in the office of the local treasurer.

All required records are researched. The applicable parties are entered into a database for additional address verification and eventual notice if the parcel is not redeemed.

Converting the State delivered data into a useable notice database is in itself a huge task.

The decision in *Dow v. State* mandates that each party is entitled to separate notice. **This requires every single tax roll record to be manually parsed into a fresh database.** (ie: Taxpayer record "John & Mary Smith" must become two records, one for John Smith and one for Mary Smith).

Note: The parties identified generally do not include those that merely PAID past tax amounts. The payment of tax has not been declared by any court to provide that party with entitlement to notice.

- c. The address reasonably calculated to apprise each owner of an interest in the property who is entitled to notice.

Statute mandates two primary sources for obtaining this information, which have been reliably held by the courts to be sufficient:

- 1) Names and addresses from county or local tax records
- 2) Names and addresses from recorded title documents



The Contractor has found the records from county and local tax sources to often be incorrect, outdated or contain undeliverable mail addresses. **As many as 10% of the tax roll addresses** are either undeliverable because of format or expired forwarding orders from the USPS.

Even more contrasting, names and address from recorded title documents are often 10, 20 or 30 years old and can be wholly unreliable. Many older "rural route" addresses are no longer mail deliverable. Most parties have moved at least once. Many are deceased.

The returned/undeliverable rate for deed addresses can reach **40%**.

While these addresses may meet the statutory test of sufficiency, they often fall far short of ideal.

The Contractor supplements the intent of Statute with an ongoing effort during the entire forfeiture season to verify the actual, current address of parties of interest by:

- 1) Sending a preliminary "test mail" to each address identified as a "taxpayer" or "deed" address. These are sent "address correction requested"
- 2) Entering USPS address corrections into the database as additional address data for the party of interest.
- 3) Researching returned mail that is not address corrected for a more properly deliverable or more current address
- 4) "Re-testing" additionally discovered addresses with subsequent mail
- 5) Adding these improved addresses to the final notice database

The result of this "test mail" is substantial:

- Outdated addresses are identified and researched for a better "mail to" address.
- Many unrecorded and abandon interests are evidenced for further notice efforts, even if not required by statute.
- Undeliverable USPS addresses are corrected if possible

Because many parties may have a title interest but *may not be receiving tax bills*, this "test mail" is the first notice many of them have of the pending foreclosure. This notice creates substantial redemption activity.

A review of annual redemptions will indicate a substantial number of them occur each season in the June-July period, which is when the first test mailing is sent.

The redemption "spike" after the first test mail exceeds that of the historically active "last day".

The "test mail" includes a "return reply" postcard on which recipients can indicate that they:

- Intend to pay
- No longer claim an interest in the property
- Are abandoning the property
- Ask for contact

In any instance, these reply postcards evidence additional attempted delivery of the basic information relating to the pending foreclosure, and verify that the address is current and deliverable.

Examples of the additional (non-statutory) mailings are following, and made a part of this proposal.

First class mail is also used several other times during the forfeiture process to both verify address and encourage redemption:



- Prior to published notice (A **MAJOR** incentive to redeem)
- Prior to the property visit (if dates are supplied by the DNR)
- A first class copy of the final certified notice is also sent to comply with the intent of *Jones v Flowers*.
- After the court hearing, but before foreclosure is final.

All mailpieces are tracked, using the most advanced USPS methods available.

The Contractor has a substantial number of resources for “skip tracing” parties whose mail is undeliverable during the test mail process.

These online resources gather tracking information from a variety of databases including:

- Motor vehicle/Drivers License records
- Utility billing addresses
- Newspaper and magazine subscription records
- Retailer mailing lists
- USPS Forwarding address databases

The information available to Contractor can also give Contractor many other details which are useful in further research, including contact information for neighbors and other persons who lived in the same household. Many of these records can go back 20 years or more.

The Contractor having potential access to **State Income Tax returns** would be a tremendous additional resource for tracing the movement of individuals and business entities.

Michigan based business entities are tracked through the States **CIS database of corporate filings**, and additional notice is sent to the registered agent of each such entity at their registered agent address as indicated by the most recent filing.

The Contractor also utilizes the **Social Security Death Index (SSDI)** to attempt to determine if “missing” parties are deceased, and attempt to locate heirs through further research including Probate records if any exist.

In addition to local **Register of Deeds** records, the Contractor also has access to the online tract indexes of both **First American Title Company** and **Chicago Title Insurance Company**.

Hundreds, perhaps thousands of phone calls are also placed to track the movement of parties that have “disappeared”. Many times neighbors or former co-occupants can give Contractor valuable information regarding current whereabouts.

3. Generate for each owner of an interest in the property who is entitled to notice, a notice of the judicial foreclosure hearing and the administrative show cause hearing. The notice required under this subdivision shall be in a form prescribed by the Department of Treasury.

The Contractor will utilize the prescribed form for individual records, and have developed “list” notices collaboratively over the last 6 years with the approval of the Office of Attorney General for noticing parties with voluminous parcel records (ie: Lenders and substantial property owners).

The list notice format is easier to navigate and reduces paper waste. It complies with the requirements of the statute as to content.

4. Mail by certified mail, return receipt requested, Notice of Show Cause Hearing and Judicial Foreclosure Hearing (see Exhibit C for the Notice of Show Cause Hearing and Judicial Foreclosure Hearing) at least 45 working days prior to the foreclosure hearing. The certified mail notice required under this subdivision shall be mailed by the Contractor from an address located in Michigan. Returned certified mail cards and any notices which are returned as undeliverable shall be received by the Contractor at an address located in Michigan.



The Contractor's technology is state-of-the-art, and Contractor strives to provide "frequent flyers" (ie: lenders and substantial property interest owners) with LISTS as opposed to many different individual mail pieces, making their task much easier.

Notices are mailed en masse in December and January annually, providing Contractor with the necessary time to complete the mail testing and address verification effort.

The Contractor maintains an in-house certified mail plant, and has a demonstrated track record of delivering over 120,000 notices annually to the USPS in a format acceptable under their standards within the time requirements of Treasury.

All items are mailed from, and returns received at Kalamazoo, Michigan.

In addition to mailing the final notices under this Statute, Contractor mails the "February" notice of delinquency for most of the 13 opt out counties.

Also, because the Contractor acts for approximately 60 County Treasurers, many institutional lenders and other major property interest holders come to Contractor annually for "statewide" reference of their properties in jeopardy.

It is not uncommon for final certified postage on individual parcels to exceed \$50 because of multiple parties and multiple addresses. Many are in excess of \$100 per parcel.

5. Mail, by first class mail, Notice of Show Cause Hearing and Judicial Foreclosure Hearing to addressee at same address as any certified mail notices, at least 30 days prior to the scheduled foreclosure hearings. Track first-class mailings as support, in the event of required signed affidavit of mailing.
6. Generate and provide to Contract Compliance Inspector by five (5) working days prior to the scheduled foreclosure hearing in each county a Proof of Notice of Administrative Show Cause Hearing and Judicial Foreclosure Hearing Affidavit (see Exhibit D for a sample of the Proof of Notice of Administrative Show Cause Hearing and Judicial Foreclosure Hearing Affidavit), as well as lists of noticed parcels and sample copies of the mailed notices for each county. The Proof of Notice of Administrative Show Cause Hearing and Judicial Foreclosure Hearing Affidavit under this subdivision must be in a form approved by the Department of Treasury. See section 2.073 for applicable liquidated damages in failing to perform this deliverable.

The Contractor has developed a list format affidavit/proof in association with the office of the Attorney General/Treasury which significantly reduced the amount of paper and provides much more rapid visual review. The list format meets all of the requirements of the statute.

The notarized affidavit cover pages are executed and mailed in (with sample copies of the notices) well in advance of the hearing. The body of the proofs are then emailed subsequently, to provide as much time to collect return receipt detail as is practical.

7. Not later than thirty (30) days prior to the scheduled show cause hearing, provide substitute notice by publication for any owner of an interest in the property who is entitled to notice and who cannot be notified by certified mail notice. As used in this subdivision, "substitute notice by publication" means publishing the information contained in the certified mail notice in a newspaper published and circulated in the county in which the parcel of property is located. If no newspaper is published in that county, publication shall be made in a newspaper published and circulated in an adjoining county. The substitute notice by publication required under this subdivision shall be made once each week for three consecutive weeks, and shall conform to the statutory requirements of MCL 211.78i(8).

The Contractor has successfully executed such task for over 60 counties for several years and is familiar with all requirements and methods for accomplishing this notice and providing Treasury with the necessary evidentiary support material.

It has been Contractor's experience that certified mail return can take (at times) more than 6 weeks. There is also substantial lead time ("publication proof and deadline") required by the newspapers and/or third-party printers.



For this reason, Contractor publishes the names of ALL parties with interests in unredeemed parcels after a specific deadline, rather than create a quagmire trying to track what has and has not been returned by the USPS as delivered.

The publication deadline dates can sometime precede the actual mailing date.

Prior to publication, the Contractor notifies all outstanding parties by first class mail of the pending publication and the deadline to pay to avoid being listed. Published notice is a substantial incentive to redeem, and there is marked redemption activity at this deadline.

Statute requires not only tear sheets, but also publishers affidavits (which Contractor supplies). It is worthy of note that publishers charge for these affidavits.

8. Forward Proofs of Publication from newspapers to the Contract Compliance Inspector, no later than five (5) days prior to scheduled judicial foreclosure hearings.
9. When requested by the Department of Treasury, appear at the judicial foreclosure hearing, or the administrative show cause hearing, or both hearings, to answer any questions or provide documentation concerning the notification process.
10. Provide the Contract Compliance Inspector upon request copies of any documentation necessary, and in a format specified by the Contract Compliance Inspector, to permit the Contract Compliance Inspector to ensure that all statutory requirements have been satisfied.
11. Upon the prior written approval of the Contract Compliance Inspector, the Contractor may supplement the tasks required in section 1.104 with additional tasks, or divide the tasks required in 1.104 into sub tasks or sub elements in order to permit the development of alternative approaches or the application of proprietary analytical techniques.
12. The work shall be commenced by the Contractor by no later than five (5) working days following annual delivery of data detailed in section 1.104.15 and shall be completed by the Contractor by no later than five (5) working days prior to the scheduled foreclosure hearing in each county.
13. Same; access to governmental offices, responsibility for.
 - a. The Contractor is responsible for arranging, scheduling, and securing access to all offices of county or local government officials and to all records, papers, and documents maintained by those officials which are necessary to perform the tasks required in this RFP.
14. Licensure as condition precedent; subsequent licensure revocation, suspension, or impairment; notice to Department of Treasury.
 - a. As a condition precedent for eligibility to perform the services set forth in this Request for Proposal, Contractor shall furnish suitable proof to the Department of Treasury that the Contractor is licensed to conduct business in Michigan.
 - b. If, at any time subsequent to the awarding of a contract under this Request for Proposal and while the contract remains in effect for the Contractor, the license of the Contractor to conduct business in Michigan is in any manner revoked, suspended, or otherwise impaired, the Contractor shall inform the Contract Compliance Inspector in writing within 30 days of the revocation, suspension, or impairment.

The Contractor is not aware of any licensing requirement for foreclosure processing in the State of Michigan.

The Contractor is a licensed title insurance agency in the State of Michigan, although this requirement was removed from statute some number of years ago.

This evidence has been previously submitted to Treasury and to Contractor's belief is already on file. Contractor will resubmit any specific items requested in a timely manner.



15. Tasks to be performed by the Department of Treasury.
 - a. The Department of Treasury shall provide to the Contractor the following:
 - i. For each county in which the State is responsible for the foreclosure and sale of tax delinquent property, a list, arranged by county, which contains for each parcel of property listed all of the following:
 1. The name of the record owner.
 2. The address of the record owner.
 3. The property identification number.
 4. The legal description of the property.
 - ii. The prescribed format for each of the following:
 1. The proof of notice which the Contractor is required to deliver to the Contract Compliance Inspector by five (5) working days prior to the scheduled foreclosure hearing in each county.
 2. The Show Cause Hearing Notice and Judicial Foreclosure Hearing Notice
 - b. The Department of Treasury shall provide to the Contractor the information required under subsection 1.104.15 in an electronic format. As used in this subsection, "electronic format" includes but is not limited to computerized disc, computerized tape, or a requirement that the Contractor access the information by means of the Internet from a website maintained by the Department of Treasury.
16. Original documents, transmittal of by Contractor.
 - a. Following the entry of the foreclosure judgments, the Contractor shall send to the Contract Compliance Inspector, two copies of a CD containing a summary of all of the notices mailed and the results of each mailing, broken down by county and local parcel number as well as electronic images of all notices and affidavits.
 - b. Upon contract expiration, the Contractor shall transmit to the Contract Compliance Inspector the originals of any documents generated or produced by the Contractor in connection with this contract.

The Contractor has been providing electronic summaries of all foreclosure elements under its contract to the Attorney Generals staffer assigned to Treasury, and in the future will send a duplicate copy to the Contract Compliance Inspector.

The Contractor is also developing an internet platform/web portal for more detailed information which will be accessible by these same parties. This web portal will be active as of April 2008 and Contractor expects will include the ability to access 5 or more years of legacy data from past reversion cycles.

There also exists the technology for Treasury and the AGs office to access USPS records of tracked first class and/or certified mail delivery online on demand. Caveat: The USPS only maintains online images of receipted mail for a short time, however the Contractor has an automated system in place to collect and archive these images for permanent reference within its own system.

1.2 Roles and Responsibilities

1.201 CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES

Contractor must provide a project manager to act as a central point of contact for all contractual activities. Identify Contractor staff who will be involved, identify by name the individuals, and describe in detail their roles and responsibilities. Descriptions of roles should be functional and not just by title. Include an organization chart in Article 1, Attachment B.

**1.202 STATE STAFF, ROLES, AND RESPONSIBILITIES**

1. Contract Compliance Inspector per section 2.015.
2. Attorney Generals' Office to assist with foreclosure and sale phases of tax foreclosure.

1.203 OTHER ROLES AND RESPONSIBILITIES

Local Units of Government for forfeiture phase of tax foreclosure.

1.3 Project Plan

1.301 PROJECT PLAN MANAGEMENT

1. The Contractor will carry out this project under the direction and control of the Michigan Department of Treasury.
2. Contractor's must provide a draft project plan in Article 1, Attachment C with proposal.
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 this RFP 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.
 - d. The time-phased plan in the form of a graphic display, showing each event, task, and decision point in your work plan.

1.302 REPORTS

1. The Contractor shall provide to the Contract Compliance Inspector the report required under this section each month within 10 work days of the last day of the previous month.
2. A report required under this section shall be submitted by the Contractor in an electronic format. As used in this subsection, "electronic format" means computerized disc, computerized spreadsheet, or other medium approved by the Contract Compliance Inspector. Each report shall be arranged and contain the information as specified in the sample report located in Exhibit A.

Contractor will endeavor to automate such a report and deliver it monthly via email to the specific Contract Compliance Inspector. Contractor will also be providing access for on-demand parcel specific detail via a web portal which is already in development and will be deployed in or before April 2008.

1.4 Project Management

1.401 ISSUE MANAGEMENT

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

Contractor has an existing network of contact with Treasury and its AG staffer, and has performed Issue Management with credibility over numerous years.

The Contractor is aware of the indemnification of the State as to claims, and in the past have settled those few issues which have arisen quickly and completely.



1.402 RISK MANAGEMENT

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

Contractor strongly believes in risk management, and finds that the best defense is a strong effort at delivering sufficient notice. Contractor's extra mail testing and undeliverable mail research programs are one illustration of this.

Contractor also stays abreast of recent court rulings and changes to applicable statute as revisions occur, and reviews processes to assure at least compliance and where possible a method which achieves a result far in excess of required methodology.

1.403 CHANGE MANAGEMENT

If a proposed contract change is approved by the Contract Compliance Inspector, the Contract Compliance Inspector will submit a Contract Change Request to the Department of Treasury, Purchasing Section, and it will be forwarded to the Department of Management and Budget, Purchasing Operations Buyer, who will make recommendations to the Director of Purchasing Operations regarding ultimate approval/disapproval of change request. If the DMB Purchasing Operations Director agrees with the proposed modification, and all required approvals are obtained (including State Administrative Board), the Purchasing Operations Buyer will issue an addendum to the Contract, via a Contract Change Notice.

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

1.5 Acceptance

1.501 CRITERIA

The following criteria will be used by the State to determine Acceptance of the Services and/or Deliverables provided under this SOW:

1. Properties are not redeemed (section 1.104.1)
2. 40-year title search history completed (section 1.104.2)
3. Due process notices completed (sections 1.104.3 through 8)
4. Attendance at hearings upon request (section 1.104.9)
5. Documentation provided upon request (section 1.104.10)
6. Original documents transmitted (section 1.104.16)
7. Monthly reports provided per section 1.302.

1.502 FINAL ACCEPTANCE

Final acceptance is when the entire notification and documentation process is completed. Services may be required after the sale of property to address title search and notification issues.

1.6 Compensation and Payment

1.601 COMPENSATION AND PAYMENT

This Contract is a firm, fixed price Contract (see Article 1, Attachment A for Pricing). Payment/invoicing for this Contract will occur monthly based on the total number of un-redeemed parcels being processed (see section 2.092).

Pricing must be provided on a per parcel basis; furthermore, pricing must include a separate price for parcels being processed for the first time (non-recurring) and processed after the first time (recurring) to account for previous title search information available that only requires updating.

The yearly contract amount will be based upon the number of forfeiture parcels, which remain active as of May 1, multiplied by the accepted per-parcel fee for recurring and non-recurring parcels. Identification of active recurring and non-recurring parcels will be agreed upon by the Contract Compliance Inspector and the Contractor within 5 working days of May 1. The Contractor will submit monthly invoices for 1/12 of the contract total, beginning in June and continuing through May.



The invoice must list the contract number and/or purchase order number. All invoices must be submitted to the following address (failure to do so may result in late payment):

Michigan Department of Treasury
Attn: Finance and Accounting Division
430 W. Allegan.
Lansing, MI 48922.

1.7 Additional Terms and Conditions Specific to this SOW

1.701 ADDITIONAL TERMS AND CONDITIONS SPECIFIC TO THIS SOW

Contractor will comply with Safeguard Requirements of Confidential Data (Exhibit B).



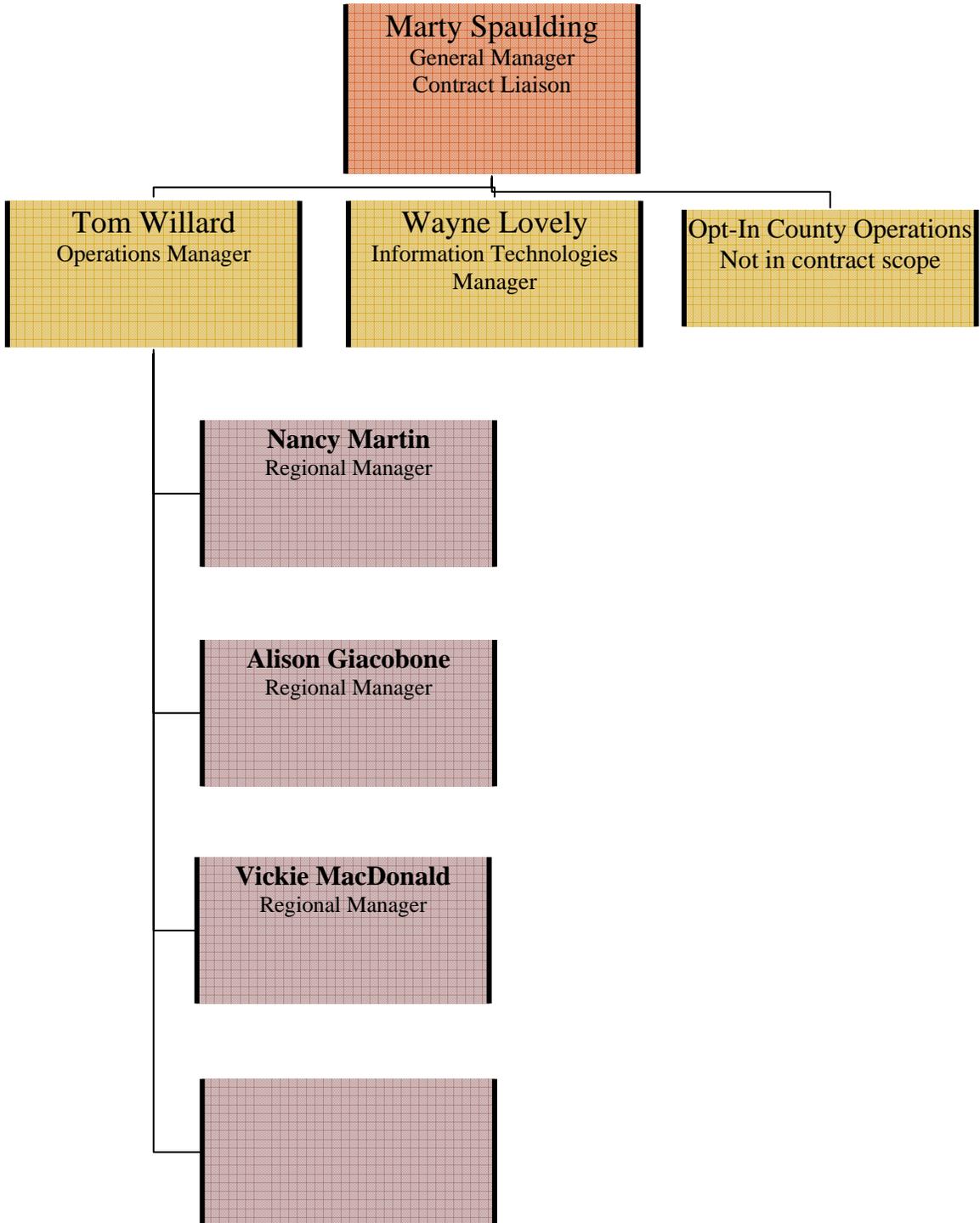
Article 1, Attachment A
Pricing

| | Cost per Parcel (Non-recurring) | Cost Per Parcel (Recurring) |
|-------------------------|--|------------------------------------|
| 1) 0 or Greater Parcels | \$120.00 | \$90.00 |
| | | |
| | | |
| | | |
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**** Pricing must be all inclusive ****



Article 1, Attachment B
Organizational Chart, including Key Personnel





Article 1, Attachment C

Project Plan

Project Plan

| <u>Date</u> | <u>Action by Title Check or others</u> | <u>Decision Point</u> |
|--------------------|---|--|
| March 1 | Un-redeemed parcels forfeit to FGU | Redeemed parcels removed |
| 3/1 > 3/30 | Treasurers forward data to Treasury | |
| 3/15 > 4/15 | Treasury refines data and forwards to Title Check | Redeemed parcels removed |
| 4/15 > end | Title Check monitors redemption | Redeemed parcels removed |
| 4/15 > end | Title Check: <ul style="list-style-type: none"> • Prints title search sheets • Issues searches to examiners • Performs preliminary online database title searches • Receives returned preliminary title and redemption data • Undertakes due diligence / verification efforts • Parses database to create individual notices | |
| 5/15 | Invoice numbers fixed | Redeemed parcels removed |
| 6/15 > end | Title Check issues monthly report to Contract Administrator | Quantify current results |
| 7/15 | Petition filed with Court | |
| 7/15 > end | Test mail sent to taxpayer and other party-of –interest addresses | Incorporate results into data |
| 9/15 > end | Compares done with FGU/Treasurer active parcel lists | Redeemed parcels removed Missing parcels quantified |
| 9/1 > end | Property visit notice mail sent | Based on visit date |
| 11/15 > end | Publication notice mail sent | 12/1 Deadline permitted |
| 12/15 > end | FINAL CERTIFIED NOTICE mailed | |
| 12/15 > end | Duplicate by First Class mail sent | |
| 12/15 > end | Published notice prepared, issued | Redeemed parcels removed |
| 12/16 > end | Returned certified mail returns researched for better mailing address | Addresses updated Notices remailed |
| 12/16 | USPS delivers or returns final notice | Database updated |
| 12/30 > end | Published notice appears for 3 successive weeks in locally issued newspapers | |



- 1/15 > end **FGU holds show cause hearing** Deferred foreclosures removed from database

- 1/15 > end **Proofs of notice generated and forwarded to Contract Administrator / AGs office**

- 2/1 > end **Foreclosure hearing in Circuit Court** Deferred foreclosures removed from database

- 2/15 > end **“Drop dead date” First Class mail notice sent.**

END: 3/31 Foreclosure becomes final

Contractor is available during and after the hearing cycle for production of findings and testimony without additional charge.



Article 2 – General Terms and Conditions

2.010 Contract Structure and Administration

2.011 Definitions

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

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

2.012 Attachments and Exhibits

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

2.013 Statements of Work

- (a) The parties agree that the Services/Deliverables to be rendered by Contractor pursuant to this Contract (and any future amendments of it) will be defined and described in detail in Statements of Work or Purchase Orders (PO) executed under this Contract. Contractor shall not be obliged or authorized to commence any work to implement a Statement of Work until authorized via a PO issued against this Contract, or an amendment to this Contract (see 2.106). Contractor shall perform in accordance with this Contract, including the Statements of Work/Purchase Orders executed under it.
- (b) Unless otherwise agreed by the parties, each Statement of Work (as defined in Article 1) will include, or incorporate by reference to the appropriate Contract Article 1 Attachment containing, the following information:
 - a description of the Services to be performed by Contractor under the Statement of Work;
 - a project schedule (including the commencement and completion dates for all tasks, subtasks (for all projects of sufficient duration and complexity to warrant sub task breakdown), and Deliverables;
 - a list of the Deliverables to be provided, if any, including any particular specifications and acceptance criteria for such



Deliverables, and the dates on which the Deliverables are scheduled to be completed and delivered to the State;

- all Deliverable price schedules and other charges associated with the Statement of Work, the overall fixed price for such Statement of Work and any other appropriate pricing and payment terms;
- a specification of Contractor's and the State's respective performance responsibilities with respect to the performance or completion of all tasks, subtasks and Deliverables;
- a listing of any Key Personnel of Contractor and/or its Subcontractors for that Statement of Work and any future Statements of Work;
- any other information or provisions the parties agree to include.

(c) Reserved.

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

2.014 Issuing Office

This Contract is issued by the Department of Management and Budget, Purchasing Operations 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
 Purchasing Operations
 Department of Management and Budget
 Mason Bldg, 2nd Floor
 PO Box 30026
 Lansing, MI 48909
 Email: wilsonj4@michigan.gov
 Phone: 517-241-1916

2.015 Contract Compliance Inspector

Upon receipt at 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:

Patricia Simon, Manager
 Department of Treasury
 Bureau of Local Government
 Foreclosure Services Section
 Austin Building, 2nd Floor
 Lansing, MI 48922.

2.020 Contract Objectives/Scope/Background

2.021 Background - Reserved

2.022 Purpose - Reserved

2.023 Objectives and Scope - Reserved



2.024 Interpretation- Reserved

2.025 Form, Function and Utility

If the Contract is for use of more than one (1) State agency and if the Deliverable/Service does not meet the form, function, and utility required by that State agency, that agency may, subject to State purchasing policies, procure the Deliverable/Service from another source.

2.030 Legal Effect and Term

2.031 Legal Effect

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

2.032 Contract Term

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

2.033 Renewal(s)

This Contract may be renewed in writing by mutual agreement of the parties not less than 30 days before its expiration. The Contract may be renewed for up to five (5) additional one-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 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.

2.052 PM Methodology Standards- Reserved

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

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

2.062 Software - Reserved

2.063 Hardware - Reserved

2.064 Equipment to be New and Prohibited Products

(a) Equipment to be New

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

(b) Prohibited Products

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

2.070 Performance

2.071 Performance, In General

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

2.072 Time of Performance

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

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

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

2.073 Liquidated Damages

The parties acknowledge that failure to provide by five (5) working days prior to the scheduled foreclosure hearing in each county the Proof of Notice of Administrative Show Cause Hearing and Judicial Foreclosure Hearing Affidavit, as well as sample copies of the mailed notices for each county (see section 1.104.6) will interfere with the timely and proper completion of the Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any such delay.



Therefore, Contractor and the State agree that in the case of any such failure to provide by five (5) working days prior to the scheduled foreclosure hearing in each county the Proof of Notice of Administrative Show Cause Hearing and Judicial Foreclosure Hearing Affidavit, as well as sample copies of the mailed notices for each county (see section 1.104.6) in respect of which the State does not elect to exercise its rights under **Section 2.191**, the State may assess liquidated damages against Contractor as specified in this Section.

If failure to provide by five (5) working days prior to the scheduled foreclosure hearing in each county the Proof of Notice of Administrative Show Cause Hearing and Judicial Foreclosure Hearing Affidavit, as well as sample copies of the mailed notices for each county (see section 1.104.6) occurs, then the State shall be entitled to collect liquidated damages in the amount of \$1,000.00 and an additional \$1,000.00 per day for each day Contractor fails to remedy failure to provide by five (5) working days prior to the scheduled foreclosure hearing in each county the Proof of Notice of Administrative Show Cause Hearing and Judicial Foreclosure Hearing Affidavit, as well as sample copies of the mailed notices for each county (see section 1.104.6).

2.074 Bankruptcy

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

2.075 Time is of the Essence

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

2.076 Service Level Agreements (SLAs) – Reserved

2.080 Delivery and Acceptance of Deliverables

2.081 Delivery Responsibilities

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

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



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

2.082 Delivery of Deliverables

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

2.083 Testing- Reserved

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- Reserved

2.086 Process for Approval of Services

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

2.087 Process for Approval of Physical Deliverables- Reserved

2.088 Final Acceptance

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

2.090 Financial

2.091 Pricing

(a) Fixed Prices for Services/Deliverables

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

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

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

(c) Services/Deliverables Covered

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

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

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

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

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

(c) Out-of-Pocket Expenses

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

(d) Pro-ration

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

(e) Antitrust Assignment

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

(f) Final Payment

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

2.093 State Funding Obligation

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

2.094 Holdback - Reserved



2.095 Electronic Payment Availability

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

2.100 Contract Management

2.101 Contract Management Responsibility

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

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

2.102 Problem and Contract Management Procedures

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

2.103 Reports and Meetings

(a) Reports.

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

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

(b) Meetings.

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



2.104 System Changes

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

2.105 Reserved

2.106 Change Requests

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

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

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

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

(a) Change Requests

(i) State Requests

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

(ii) Contractor Recommendations

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

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

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



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

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

2.107 Management Tools- Reserved

2.110 Records and Inspections

2.111 Records and Inspections

The Contractor agrees that the State may, upon 24-hour notice, perform an audit at Contractor's location(s) to determine if the Contractor is complying with the requirements of the Contract. The Contractor agrees to cooperate with the State during the audit and produce all records and documentation that verifies compliance with the Contract requirements.

2.112 Errors

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

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

2.120 State Responsibilities

2.121 State Performance Obligations

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

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

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



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

2.130 Security

2.131 Background Checks

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

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

2.140 Reserved

2.150 Confidentiality

2.151 Freedom of Information

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

2.152 Confidentiality

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

**2.153 Protection of Confidential Information**

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

2.154 Exclusions

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

2.155 No Implied Rights

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

2.156 Remedies

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

2.157 Security Breach Notification

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

**2.158 Survival**

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

2.159 Destruction of Confidential Information

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

2.160 Proprietary Rights**2.161 Ownership**

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

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

2.162 Source Code Escrow – Reserved**2.163 Rights in Data**

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

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

2.164 Ownership of Materials

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

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

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

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

The Contractor represents and warrants:

(a) It is capable in all respects of fulfilling and shall fulfill all of its obligations under this Contract. The performance of all obligations under this Contract shall be provided in a timely, professional, and workman-like manner and shall meet the performance and operational standards required under this Contract.

(b) The Contract Appendices, Attachments and Exhibits identify the equipment and software and services necessary for the Deliverable(s) to perform and Services to operate in compliance with the Contract's requirements and other standards of performance.

(c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by Contractor under this Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by Contractor to the State under this Contract, nor their use by the State, will infringe the patent, copyright, trade secret, or other proprietary rights of any third party.

(d) If, under this Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to such items in this Contract, Contractor shall assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.

(e) The contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into this Contract, on behalf of Contractor.

(f) It is qualified and registered to transact business in all locations where required.

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

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



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

(j) The prices proposed by Contractor were arrived at independently, without consultation, communication, or agreement with any other bidder for the purpose of restricting competition; the prices quoted were not knowingly disclosed by Contractor to any other bidder; and no attempt was made by Contractor to induce any other person to submit or not submit a proposal for the purpose of restricting competition.

(k) All financial statements, reports, and other information furnished by Contractor to the State as part of its response to the RFP or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Contractor as of the respective dates, or for the respective periods, covered by such financial statements, reports, other information. Since the respective dates or periods covered by such financial statements, reports, or other information, there have been no material adverse change in the business, properties, financial condition, or results of operations of Contractor.

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

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

2.172 Software Warranties - Reserved

2.173 Equipment Warranty - Reserved

2.174 Physical Media Warranty – Reserved

2.175 DISCLAIMER- Reserved

2.175 Standard Warranties- Reserved

2.176 Consequences For Breach

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

2.180 Insurance

2.181 Liability Insurance

(a) Liability Insurance

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



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

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

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

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

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

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

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

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

1. Commercial General Liability with the following minimum coverage:

\$2,000,000 General Aggregate Limit other than Products/Completed Operations

\$2,000,000 Products/Completed Operations Aggregate Limit

\$1,000,000 Personal & Advertising Injury Limit

\$1,000,000 Each Occurrence Limit

\$500,000 Fire Damage Limit (any one fire)

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

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

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

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



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

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

4. Employers liability insurance with the following minimum limits:

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

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

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

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

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

(b) Subcontractors

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

(c) Certificates of Insurance and Other Requirements

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

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



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

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

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



2.202 Excusable Failure

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

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

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

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

2.203 Disaster Recovery

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

2.210 Termination/Cancellation by the State

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

2.211 Termination for Cause

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



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

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

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

2.212 Termination for Convenience

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

2.213 Non-Appropriation

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

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

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



2.214 Criminal Conviction

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

2.215 Approvals Rescinded

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

2.216 Rights and Obligations Upon Termination

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

2.217 Reservation of Rights

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

2.218 Contractor Transition Responsibilities

In the event this contract is terminated, for convenience or cause, dissolved, voided, rescinded, nullified, expires or is otherwise rendered unenforceable, the Contractor agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. In the event of termination or the expiration of this Contract, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed 180 days. These efforts shall include, but are not limited to, the following:



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

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

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

(e) Payment - If the transition results from a termination for any reason, reimbursement shall be governed by the termination provisions of this Contract. 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 Reserved

2.250 Dispute Resolution

2.251 In General

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

2.252 Informal Dispute Resolution

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

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

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

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

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



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

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

2.253 Injunctive Relief

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

2.254 Continued Performance

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

2.260 Federal and State Contract Requirements

2.261 Nondiscrimination

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

2.262 Unfair Labor Practices

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

2.263 Workplace Safety and Discriminatory Harassment

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

2.270 Litigation**2.271 Disclosure of Litigation**

(a) Disclosure. Contractor must disclose any material criminal litigation, investigations or proceedings involving the Contractor (and each Subcontractor) or any of its officers or directors or any litigation, investigations or proceedings under the Sarbanes-Oxley Act. In addition, each Contractor (and each Subcontractor) must notify the State of any material civil litigation, arbitration or proceeding which arises during the term of the Contract and extensions thereto, to which Contractor (or, to the extent Contractor is aware, any Subcontractor hereunder) is a party, and which involves: (i) disputes that might reasonably be expected to adversely affect the viability or financial stability of Contractor or any Subcontractor hereunder; or (ii) a claim or written allegation of fraud against Contractor or, to the extent Contractor is aware, any Subcontractor hereunder by a governmental or public entity arising out of their business dealings with governmental or public entities. Any such litigation, investigation, arbitration or other proceeding (collectively, "Proceeding") must be disclosed in a written statement to the Contract Administrator within 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 Purchasing Operations.
- (2) Contractor shall also notify Purchasing Operations within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.
- (3) Contractor shall also notify Purchasing Operations within 30 days whenever changes to company affiliations occur.

2.272 Governing Law

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

2.273 Compliance with Laws

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



2.274 Jurisdiction

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

2.280 Environmental Provision

2.281 Environmental Provision- Reserved

2.290 General

2.291 Amendments

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):

Tiitle Check, LLC
516 W South St
Kalamazoo, MI 49007

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

(b) Binding Commitments

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

2.297 Media Releases and Contract Distribution**(a) Media Releases**

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

(b) Contract Distribution

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

2.298 Reformation and Severability

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

2.299 Consents and Approvals

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

2.300 No Waiver of Default

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

**2.301 Survival**

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

2.302 Covenant of Good Faith

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

2.303 Permits

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

2.304 Website Incorporation

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

2.305 Taxes

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

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

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

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

2.308 Future Bidding Preclusion

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

2.310 Reserved



2.320 *Extended Purchasing*

2.321 MiDEAL- Reserved

2.322 State Employee Purchases - Reserved

2.330 *Federal Grant Requirements- Reserved*



Exhibit A
Sample Report



Exhibit B

Safeguard Requirements of Confidential Data



Exhibit C

Notice of Show Cause Hearing and Judicial Foreclosure Hearing



Exhibit D

Proof of Notice of Administrative Show Cause Hearing and Judicial Foreclosure Hearing Affidavit