

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

June 7, 2010

CHANGE NOTICE NO. 3
TO
CONTRACT NO. 071B8200183
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR		TELEPHONE (937) 241-8515 Wendy Gramza
LexisNexis, a division of Reed Elsevier Inc. Attn: Customer Legal Services 9443 Springboro Pike Miamisburg, OH 45342 wendy.gramza@lexisnexis.com		
Contract Compliance Inspector: Adam Koenigsknecht (517) 335-6481 Subscription for Statewide Electronic Access to Legal Research Databases		BUYER/CA (517) 335-6481 Adam Koenigsknecht
CONTRACT PERIOD: From: November 15, 2008 To: August 31, 2010		
TERMS Net 30 Days After Receipt of Invoice	SHIPMENT As Directed or Ordered	
F.O.B. Delivered	SHIPPED FROM Per Contract	
MINIMUM DELIVERY REQUIREMENTS N/A		

NATURE OF CHANGE(S):

Effective June 7, 2010, the total Contract Value is hereby **INCREASED \$59,094.00**.

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

AUTHORITY/REASON:

Per agency request (PRF dated 5/3/10), Ad Board approval on 6/1/10, and DTMB/Purchasing Operations' approval.

TOTAL REVISED ESTIMATED CONTRACT VALUE: \$430,146.00

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

March 17, 2010

CHANGE NOTICE NO. 2
TO
CONTRACT NO. 071B8200183
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR		TELEPHONE (937) 241-8515 Wendy Gramza
LexisNexis, a division of Reed Elsevier Inc. Attn: Customer Legal Services 9443 Springboro Pike Miamisburg, OH 45342 wendy.gramza@lexisnexis.com		
Contract Compliance Inspector: Adam Koenigsknecht (517) 335-6481 Subscription for Statewide Electronic Access to Legal Research Databases		BUYER/CA (517) 335-6481 Adam Koenigsknecht
CONTRACT PERIOD: From: November 15, 2008 To: August 31, 2010		
TERMS Net 30 Days After Receipt of Invoice	SHIPMENT As Directed or Ordered	
F.O.B. Delivered	SHIPPED FROM Per Contract	
MINIMUM DELIVERY REQUIREMENTS N/A		

NATURE OF CHANGE(S):

Effective April 1, 2010, the State is hereby exercising a five (5) month renewal option. The revised Contract end date is August 31, 2010.

Also effective April 1 2010, funds in the amount of \$46,552.00 are hereby added to this Contract.

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

AUTHORITY/REASON:

Per agency request (PRF dated 2/10/10), Contractor agreement (email dated 2/25/10), Ad Board approval on 3/16/2010, and DTMB/Purchasing Operations' approval.

REVISED CURRENT AUTHORIZED SPEND LIMIT: \$371,052.00

STATE OF MICHIGAN
DEPARTMENT OF MANAGEMENT AND BUDGET
PURCHASING OPERATIONS
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933
December 23, 2009

CHANGE NOTICE NO. 1
TO
CONTRACT NO. 071B8200183
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR LexisNexis, a division of Reed Elsevier Inc. Attn: Customer Legal Services 9443 Springboro Pike Miamisburg, OH 45342 wendy.gramza@lexisnexis.com	TELEPHONE (937) 241-8515 Wendy Gramza
Contract Compliance Inspector: Adam Koenigsknecht (517) 335-6481 Subscription for Statewide Electronic Access to Legal Research Databases	BUYER/CA (517) 335-6481 Adam Koenigsknecht
CONTRACT PERIOD: From: November 15, 2008 To: March 31, 2010	
TERMS Net 30 Days After Receipt of Invoice	SHIPMENT As Directed or Ordered
F.O.B. Delivered	SHIPPED FROM Per Contract
MINIMUM DELIVERY REQUIREMENTS N/A	

NATURE OF CHANGE(S):

Effective December 31, 2009, the State is exercising a three month option to extend. The revised contract end date is March 31, 2010. Additionally, the Contractor contact is changed to:

Wendy Gramza, Account Manager
(937) 241-8515
Wendy.gramza@lexisnexis.com

Also Effective December 31, 2009, funds in the amount of \$24,500.00 are hereby added to this Contract.

NOTE: The DMB Buyer for this Contract is changed to Adam Koenigsknecht (517) 335-6481.

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

AUTHORITY/REASON:

Per agency request, vendor agreement (email dated 12/23/09), and DMB/Purchasing Operations' approval.

REVISED CURRENT AUTHORIZED SPEND LIMIT: \$324,500.00

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

November 17, 2008

NOTICE
TO
CONTRACT NO. 071B8200183
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR		TELEPHONE (800) 227-9597 x55930
LexisNexis, a division of Reed Elsevier Inc. Attn: Customer Legal Services 9443 Springboro Pike Miamisburg, OH 45342 brent.pyle@lexisnexis.com		Brent Pyle, JD
Contract Compliance Inspector: Malynda Little (517) 373-8622		BUYER/CA (517) 373-8622
Subscription for Statewide Electronic Access to Legal Research Databases		
CONTRACT PERIOD: From: November 15, 2008 To: December 31, 2009		
TERMS	SHIPMENT	
Net 30 Days After Receipt of Invoice	As Directed or Ordered	
F.O.B.	SHIPPED FROM	
Delivered	Per Contract	
MINIMUM DELIVERY REQUIREMENTS		
N/A		

Current Authorized Spend Limit: \$300,000.00

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

CONTRACT NO. 071B8200183
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR LexisNexis, a division of Reed Elsevier Inc. Attn: Customer Legal Services 9443 Springboro Pike Miamisburg, OH 45342 brent.pyle@lexisnexis.com	TELEPHONE (800) 227-9597 x55930 Brent Pyle, JD BUYER/CA (517) 373-8622 Malynda Little
Contract Compliance Inspector: Malynda Little (517) 373-8622 Subscription for Statewide Electronic Access to Legal Research Databases	
CONTRACT PERIOD: From: November 15, 2008 To: December 31, 2009	
TERMS Net 30 Days After Receipt of Invoice	SHIPMENT As Directed or Ordered
F.O.B. Delivered	SHIPPED FROM Per Contract
MINIMUM DELIVERY REQUIREMENTS N/A	
MISCELLANEOUS INFORMATION: Current Authorized Spend Limit: \$300,000.00	

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the ITB #07118200034, and the vendor's response dated 4/21/2008; all terms and conditions of the invitation to bid are made a part hereof. The terms and conditions of this agreement are stated herein. Orders for delivery of services may be issued directly by the individual State agencies and departments through issuance of a Purchase Order.

FOR THE CONTRACTOR:

FOR THE STATE:

LexisNexis, a division of Reed Elsevier Inc.
 Firm Name

 Authorized Agent Signature

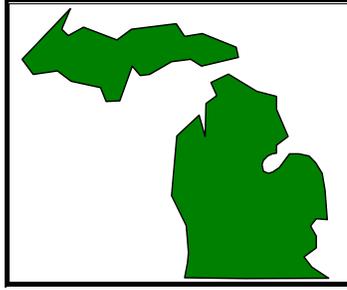
 Authorized Agent (Print or Type)

 Date

 Signature
Malynda Little, Buyer Specialist
 Name/Title

Services Division, Purchasing Operations
 Division

 Date



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

CONTRACT # 071B8200183

**Subscription for
Statewide Electronic Access to
Legal Research Databases**

Buyer Name: Malynda Little
Telephone Number: (517) 373-8622
E-Mail Address: littlem3@michigan.gov



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Article 1 – Statement of Work (SOW)

1.0 Introduction

1.001 DEFINING DOCUMENT

This document is a contract document with **LexisNexis**, a division of Reed Elsevier, Inc. to provide subscription services to all Executive State of Michigan Agencies and Departments for multiple combinations of electronic, on-line, internet-based, legal research databases and libraries, as access to such information is considered critical for the Executive Branch of State Government to carry out the mission of each respective department and agency.

Access to the subscription service may also need to be available for the following, additional governmental entities to purchase from a possible statewide Contract (also see § 2.206, *Mi-Deal*):

- Legislative Branch of Michigan State government
- Judicial Branch of Michigan State government, including:
 - District Courts
 - Circuit Courts, including the Court of Claims
 - Court of Appeals
 - Supreme Court
- Local Units of Government within Michigan, including:
 - Cities
 - Villages
 - Counties
 - Townships
 - Institutions of higher education, including junior colleges
 - Intermediate School Districts
 - Non-profit hospitals

1.002 PROJECT DESCRIPTION

Specifically, this contract provides license(s) so that staff from multiple State agencies and departments may electronically access and use various, continuously up-dated and current, legal databases, including libraries and related services, for electronic, on-line reference and research. This document contains or incorporates all defined requirements, specifications and scope of work, and all (general provision) contractual terms and conditions.

Article 1 provides the specific information on subscription service requirements associated with this agreement. Article 2 provides the general terms and conditions for the State of Michigan.

1.003 PROJECT CONTROL

A. Project Control

1. Contractor will carry out this project under the primary direction and control of the Department of Management and Budget's (DMB) Purchasing Operations.
2. Each State Department or Agency will contact the Contractor directly to order, and Contractor shall bill each State Department / Agency directly for the subscription service of, and access to, multiple combinations of electronic, on-line, internet-based, legal research databases and libraries.
3. Although there will be continuous liaison with various representatives from multiple State Agencies, the Contractor's project manager/director will meet annually as a minimum or as requested, with the DMB Contractor Administrator for the purpose of reviewing progress and annual costs and providing necessary guidance to the Contractor in solving problems that arise.

**B. Reports**

1. Contractor agrees to maintain a record system that documents the total number of units of service as defined in this Contract and delivered during each fiscal term of the Agreement. This annual usage report shall document the specific units billed to each individual Executive State Agency or Department.
2. Individual Agency / Departmental invoices shall also provide, in addition to the specific units of service billed, the following information, or other information as may be requested by the specific agency or department:
 - a. **Summary of Use, by State Department and User Name** (in Alphabetical Order):
To include -
 - Department and User Name
 - Connect time
 - Library(ies) accessed
 - Number of searches
 - Single document retrieval
 - Document printing
 - Combined search components
 - Public record requests / reports
 - Automatic displays
 - Table of Contents search / request(s)
 - Table of Authority search / request(s) and
 - Combined search authority(ies)
 - b. **Summary of Use, by Library Used:** To include -
 - Department and User Name
 - Connect time
 - Library(ies) accessed
 - Number of searches
 - Single document retrieval
 - Document printing
 - Combined search components
 - Public record requests / reports
 - Automatic displays
 - Table of Contents search / request(s)
 - Table of Authority search / request(s) and
 - Combined search authority(ies)

1.004 COMMENCEMENT OF WORK

Contractor shall not proceed with performance of the work to be done under this agreement, including the purchase of necessary materials, until both parties have signed this agreement to show acceptance of its terms and until issuance of a purchase order by an Executive State Agency or Department, per § 2.013, *Purchase Orders*.

Individual State Agencies and Departments shall issue their own purchase orders, referencing this Contract, directly with Contractor. Per § 2.013, Contractor shall also reference both this Contract (Blanket Purchase Order) agreement number and the individual State agency or department, and the specific departmental purchase order number on each individual invoice submitted to the State for payment, as well as information indicated in § 1.003 (B), *Project Control, Reports*, above. Also see § 2.202, *Contract Payment Schedule*, for more information.



1.1 Product

Contractor shall provide product-deliverables, services, staff, and otherwise do all things necessary for, and incidental to, the delivery of a subscription service that must include access to multiple combinations of electronic, on-line, internet-based, legal research databases and libraries, described and set forth as follows:

1.101 SPECIFICATIONS

A. USAGE

This unlimited access must include, but is not limited to, the following:

1. Legal research libraries for an unlimited period of time;
2. Links to any document by citation, including:
 - Auto-citation (e.g., Shepard's feature): e.g. citation service tool that helps users determine whether a case is law by tracing the history of a case, statute, or federal administrative decision, etc.; the citation service must also link to all references cited, which must include cases, statutes, administrative materials, other secondary sources, etc.);
 - Citation Notification Service: e.g., a tool that helps a user stay current on research by monitoring the status of: cases; statutes; Code of Federal Regulations; federal agency decisions; etc.; and, once the user has set up the citation that he/she wants to track, then the citation-notification service will automatically send notices via electronic-mail when the information changes.
3. Ability to search by a variety of methods, including terms and connectors (e.g., Boolean, etc.), key word, natural language, etc., ability to modify a search and have a search within results feature, and ability to search several databases with one search phrase; this ability must include (but is not limited to):
 - Indexes with search features;
 - Popular name search tables;
 - Table of contents search features;
 - Fill-in-the-blank citation formats;
 - Ability to search case law by title when the user knows one or more of the parties' names;
 - Ability to organize case laws by topic number to quickly locate and identify cases with the same or similar legal concepts and principals in any jurisdiction;
 - Ability to archive searches for no less than two weeks (14-calendar days), so that the user can return to a prior research session; the trail must show the search terms, the database(s) searched, and the documents viewed.
4. Unlimited:
 - On-line printing,
 - Off-line printing,
 - Electronic-mailing (e-mail),
 - Facsimile printing (faxing), and
 - Downloading of information;
5. Ability to access the subscription service via the internet (for State-staff use from the assigned work locations or use off-site, from work locations throughout Michigan).

**B. DATABASES****1. BASIC LEGAL DATABASES:**

The **Basic Legal Database must include**, but is not limited to, the following:

- Access to all current and former: Statutes, opinions, court cases (i.e., federal and state case law; *note* that Federal case law must also contain United States Supreme Court, U.S. Circuit Courts of Appeal, U.S. District Courts, and Tax Courts, etc.), rules, regulations (e.g. Code of Federal Regulations, containing indexes and table of contents feature, etc.), treatises, administrative materials (including administrative rules, attorney general opinions, and official policy bulletins), etc., from the United States federal government (including the United States Constitution), from the state of Michigan and from all other states and the District of Columbia, and from other countries.
- Access to statutes (federal and state) which must also contain an indication of pending legislation and historical versions of the statutes. Statutes must also contain notes of court cases pertaining to those statutes.
- Access to documents from law reviews, legal texts, continuing legal education course materials, bar journals, legal practice-oriented periodicals, such as American Law Reports, and American Jurisprudence 2d, etc.

2. PUBLIC RECORDS and PERSONAL INFORMATION DATABASES:

Public Records and Personal Information which must include, but is not limited to, any and all public records regarding individuals:

- Individual Addresses: current and past,
- Asset Check,
- Bankruptcy Filings / Information,
- Business Loans,
- Corporate Affiliations,
- Lines of Credit,
- Credit Report / Information: including open, closed, current and past-due accounts, credit limits, and tax lien information,
- Credit Score (Fair Isaac and Co [FICO] Score),
- Debt Recovery,
- Mortgages,
- Pending lawsuits of claims filed by the potential defendant: including personal injury claims and workers' compensation claims,
- Person Locator,
- Personal Property Assets,
- Private Data Resources / Social History: including possible relatives and associates,
- Professional Licenses,



- Real Property Ownership (e.g., liens, etc.),
 - Telecommunication Resources: cell telephone numbers and land telephone numbers (private and unlisted),
 - Uniform Commercial Code (UCC) filings,
 - Vehicle Identification Number Searches (nation-wide),
 - Vehicle Registrations: including all motorized vehicles (e.g., automobiles, motorcycles, water-craft, and air-craft, etc.),
 - Voter Registration information.
 - Driver License Information,
 - Court Judgments.
3. **SPECIALTY DATABASES:**
Specialty databases, notification services, or printed legal materials, exclusive to specific state agencies or departments, that are particular or exclusive to their program needs, includes (but is not limited to) the following:
- a. **Agriculture**
 - No Specialty databases
 - b. **Attorney General**
 - No Specialty databases
 - c. **Civil Rights**
 - No Specialty databases
 - d. **Civil Service**
 - No Specialty databases
 - e. **Community Health**
 - No Specialty databases
 - f. **Corrections**
 - No Specialty databases
 - g. **Education**
 - No Specialty databases
 - h. **Environmental Quality**
 - No Specialty databases
 - i. **History, Arts, and Libraries**
 - No Specialty databases
 - j. **Human Services**
 - No Specialty databases

**k. Information Technology**

- No Specialty databases

l. Labor and Economic Growth

- No Specialty databases

m. Lottery

- No Specialty databases

n. Military and Veterans Affairs

- No Specialty databases

o. Natural Resources

- No Specialty databases

p. State Police

- No Specialty databases

q. State (Secretary of State's Office)

- No Specialty databases

r. Transportation

- No Specialty databases

s. Treasury

- No Specialty databases

C. ENVIRONMENT:

Contractor must:

1. Provide an internet-based legal research services that are compatible and operate at a minimum with Microsoft Office 97 components and higher, and the PC component must be capable of processing at a minimum on Windows NT, 95, 98, 2000, XP, and higher; internet-based legal research service must also be compatible and operate with Microsoft Internet Explorer version 6.0 and higher.
2. Provide a response time for search results, designated as the time the "enter" key or its equivalent is depressed until the requested information appears on the screen, within 10 seconds or less.
3. Mail (electronically) notices to all users at least 24 hours in advance of any scheduled downtime of the on-line legal research databases.
4. Report immediately all or any system outages/shutdowns to the Contract Administrator and all listed agency/departmental contacts. Within 24 hours of problem resolution and restart, the Contractor must also prepare and submit a report to the Contract Compliance Inspector or designee indicating elapsed downtime hours, start/end timeframes, reason for the outage, impact on the systems (lost data, etc.) for each occurrence, and a resolution to mitigate future occurrences.
5. Include provisions for warning screens that shall notify users when they are entering into a database area which is not a part of the subscription package, and warn the user that if the non-subscription database is accessed there will be an additional charge.



1.102 VOLUME of NEEDED SERVICE

- A. Provide license(s) 24-hours per day, 7-days per week, 365-days per year, for use by individuals, for an unlimited period of time, to access for multiple combinations of electronic, on-line, internet-based, legal research databases, and libraries.
- B. Estimated users by Department, shall include, but are not limited to:

Executive Department, Agency, Commission, Bureau, Board, or Office	Approved Number of Users	Estimated Use Time or Estimated Average Searches per Month	Databases to be accessed
Agriculture	<ul style="list-style-type: none"> ▪ 04 ▪ 04 	<ul style="list-style-type: none"> ▪ Unlimited ▪ 600 Searches per Month 	<ul style="list-style-type: none"> ▪ Basic Legal ▪ Public Records & Personal information
Attorney General	<ul style="list-style-type: none"> ▪ 335 ▪ 335 	<ul style="list-style-type: none"> ▪ Unlimited ▪ 50,000 Searches per Month 	<ul style="list-style-type: none"> ▪ Basic Legal ▪ Public Records & Personal information
Labor & Economic Growth	<ul style="list-style-type: none"> ▪ 300 ▪ 300 	<ul style="list-style-type: none"> ▪ Unlimited ▪ 50,000 Searches per Month 	<ul style="list-style-type: none"> ▪ Basic Legal ▪ Public Records & Personal information
Civil Rights	<ul style="list-style-type: none"> ▪ 12 ▪ 12 	<ul style="list-style-type: none"> ▪ Unlimited ▪ 1,800 Searches per Month 	<ul style="list-style-type: none"> ▪ Basic Legal ▪ Public Records & Personal information
Civil Service Commission	Zero	Zero	None (at this time)
Community Health	<ul style="list-style-type: none"> ▪ 08 ▪ 08 	<ul style="list-style-type: none"> ▪ Unlimited ▪ 1,200 Searches per Month 	<ul style="list-style-type: none"> ▪ Basic Legal ▪ Public Records & Personal information
Corrections	<ul style="list-style-type: none"> ▪ 03 	<ul style="list-style-type: none"> ▪ Unlimited 	<ul style="list-style-type: none"> ▪ Basic Legal
Environmental Quality	Zero	Zero	None (at this time)
History, Arts, & Libraries	<ul style="list-style-type: none"> ▪ 11 ▪ Zero ▪ 04 public stations 	<ul style="list-style-type: none"> ▪ Unlimited ▪ None ▪ Unlimited 	<ul style="list-style-type: none"> ▪ Basic Legal ▪ Public Records & Personal information ▪ Basic Legal
Human Services	<ul style="list-style-type: none"> ▪ 15 ▪ 15 	<ul style="list-style-type: none"> ▪ Unlimited ▪ 1,500 Searches per Month 	<ul style="list-style-type: none"> ▪ Basic Legal ▪ Public Records & Personal information



Information Technology	Zero	Zero	None (at this time)
Lottery	Zero	Zero	None (at this time)
Management & Budget	<ul style="list-style-type: none"> ▪ 05 	<ul style="list-style-type: none"> ▪ Unlimited 	<ul style="list-style-type: none"> ▪ Basic Legal
Military & Veterans Affairs	Zero	Zero	None (at this time)
Natural Resources	Zero	Zero	None (at this time)
State Police	<ul style="list-style-type: none"> ▪ 10 ▪ 10 	<ul style="list-style-type: none"> ▪ Unlimited ▪ 1,500 Searches Per Month 	<ul style="list-style-type: none"> ▪ Basic Legal ▪ Public Records & Personal information
State (Secretary of)	<ul style="list-style-type: none"> ▪ 12 ▪ 12 	<ul style="list-style-type: none"> ▪ Unlimited ▪ 1,800 Searches per Month 	<ul style="list-style-type: none"> ▪ Basic Legal ▪ Public Records & Personal information
Transportation	<ul style="list-style-type: none"> ▪ 30 ▪ 30 	<ul style="list-style-type: none"> ▪ Unlimited ▪ 4,500 Searches per Month 	<ul style="list-style-type: none"> ▪ Basic Legal ▪ Public Records & Personal information
Treasury	<ul style="list-style-type: none"> ▪ 35 ▪ 50 ▪ <i>Specialty</i> 	<ul style="list-style-type: none"> ▪ Unlimited ▪ 7,800 Searches per Month 	<ul style="list-style-type: none"> ▪ Basic Legal ▪ Public Records & Personal information ▪ <i>Specialty: None. (which must be quoted separately)</i>

**1.103 RESERVED****1.104 WARRANTY for PRODUCTS / SERVICES**

- A. Contractor represents and warrants that it has the right and authority to make the Online Services and Materials available pursuant to these General Terms and Conditions.
- B. Except as otherwise provided in § 1.104 A (above) and § 2.504, *General Warranty*, online services and materials are provided on an "as is" and on an "as available" basis; Contract and each of its third party suppliers of materials expressly disclaims all warranties, including the warranties of merchantability and fitness for a particular purpose.

1.2 Service Capabilities**1.201 CUSTOMER SERVICE / ORDERING**

Contractor shall:

- A. Fulfill the State's request pursuant to the terms of this Contract, in the event of any conflict between a delivery order, task order, or agency/departmental purchase order;
- B. Receive orders by electronic mail (e-mail), by telephone, facsimile, and by written order;
- C. Consider delivery order or task order "issued" when the Contractor receives a purchase order from an authorized State of Michigan Agency or Department representative orally by telephone, or by written order received via facsimile or electronic commerce method [electronic mail, etc.], (also see § 2.013);
- D. Provide a statewide, toll-free telephone number for telephone orders, customer service inquiries, and for technical support 24-hours per day / seven-days per week;
- E. Provide resolution to State of Michigan inquiries regarding problems or issues with service-orders within at least two (2) business days from the date the inquiry is made, unless otherwise agreed to by the State;
- F. Provide internal controls (to be approved by DMB Purchasing Operations and as contract administrator deems needed and appropriate) to insure that only authorized State Department or Agency representatives order the contracted service, including verification of orders that have quantities that appear to be abnormal or excessive;
- G. Provide or assign one (1) primary staff person (and one (1) back-up staff person) specifically designated to oversee this State of Michigan account, who is an experienced representative, to supervise follow-up on State of Michigan inquiries;
- H. Provide accessible customer service department or accessible customer service help-desk staff who are empowered to solve any issues regarding or related to:
 - 1. Internet access
 - 2. Training
 - 3. Operation assistance
 - 4. Database content
 - 5. Billing inquiries

1.202 TRAINING

Contractor must provide:

- A. Internet-based legal research database training and materials necessary to operate the Internet-based service;



- B. On-line and toll-free telephone help, including customer and technical support as well as reference attorneys to assist users in their internet-based instruction manual use;
- C. On-line tutorial;
- D. Training to individual agencies, when necessary, on aspects of ordering, shipping, billing, and receiving;
- E. In-service training to State personnel on products, installation, and product safety issues, as needed, and at the request of the Contract Administrator, during the period covered by the contract;
- F. Training (at no additional cost) when systems are modified.

1.203 RESERVED**1.204 RESERVED****1.205 RESERVED****1.3 Delivery Capabilities****1.301 TIME FRAMES****A. ORDERS:**

1. All orders for electronic services shall be delivered within one (1) business day after Contractor's receipt of order (per § 1.201, *Customer Service / Ordering*).
2. All orders for printed/hard-copy materials shall be delivered within five (5) business days after Contractor's receipt of order (per § 1.201, *Customer Service / Ordering*).

B. SERVICE / ACCESS:

The response time for the electronic service for all search results, designated as the time the "enter" key or its equivalent is depressed until the requested information appears on the screen, must be 10 seconds or less (also see § 1.101, *Specifications*).

1.302 MINIMUM ORDER – RESERVED**1.303 PACKAGING – RESERVED****1.304 PALLETIZING – RESERVED****1.305 DELIVERY TERM – RESERVED****1.306 RESERVED****1.4 Project Price****1.401 PRICING**

Contract is a FIXED and firm, maximum total amount for the contract-effective period of 1-year term for total authorized value of \$450,000, with four (4) options to renew for 1-year each;

- A. The State will pay the Contractor individually for each project assignment, upon final acceptance of that project with issuance of approval for its related report(s).



- B. Reimbursement method for services shall include a rate per unit of service, pursuant to the Rates listed below, in § 104.3(l), *Rates*, below.
- C. State payment terms are Net 30 days. 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., provided that the State determines the invoice was properly rendered and approves Contractor's final report(s). Invoices shall be submitted for items shipped or services delivered, as requested by the State.

1.402 QUICK PAYMENT TERMS

Contractor agrees quick payment terms for the State, which shall include a one-percent (01%) discount off any invoice if paid within 20-calendar days from the date of invoice receipt; also see § 2.202, *Contract Payment Schedule*.

1.403 PRICE TERM

- A. CONTRACT is a FIXED amount for the contract-effective period and price-rates quoted are the maximum for that specified contract-fiscal period, as stated above, § 1.401.
- B. Reimbursement method for services shall include a rate per unit of service, pursuant to the Rates listed above in § 1.401, *Proposal Pricing*.
- C. If renewal-options are utilized by the State, then any changes to the original price quotes shall be based on changes in actual costs incurred, and, if approved, shall remain fixed until the end of that approved renewal-period (also see § 2.004).
- D. Documentation for any such changes must be provided with the request for price change in order to substantiate any requested change. Purchasing Operations reserves the right to consider various pertinent information sources to evaluate price increase requests (such as the CPI and PPI, US City Average, as published by the US Department of Labor, Bureau of Labor Statistics). Purchasing Operations also reserves the right to consider other information related to special economic and/or industry circumstances, when evaluating a price change request.
- E. Changes may be either increases or decreases, and may be requested by either party. Approved changes shall be firm for the remainder of the specified Contract period, unless otherwise approved by the State.
- F. Quoted rates will not supersede rates previously quoted under a different contract-agreement (unless the new price-rate is approved by the State and the other contract is canceled).
- G. Requests for price changes shall be RECEIVED IN WRITING AT LEAST 10 DAYS PRIOR TO THEIR EFFECTIVE DATE, and are subject to written acceptance before becoming effective. In the event new prices are not acceptable, the CONTRACT may be cancelled.
- H. For the month of September, invoices for any services provided during the State's fiscal year shall be submitted by Contractor as directed by the individual State Agency or Department invoiced, or the DMB Buyer or Contract Administrator, to meet fiscal year-end closing due dates or other requirements.



I. RATES

Basic Legal and Personal Information / Public Records Databases:

Databases to be Accessed	RATE per User per Month for ≥ 300 Users	RATE per User per Month for 299-200 Users	RATE per User per Month for 199-100 Users	RATE per User per Month for 99-01 Users
Basic Legal (BL)	\$ 39.00	\$ 40.00	\$ 41.00	\$ 42.00
Public Records & Personal information (PR / PI)	\$ 9.00	\$ 9.50	\$ 10.00	\$ 10.00
RATE for Combined BL & PR/PI:	\$ 48.00	\$ 49.50	\$ 51.00	\$ 52.00

1.5 Quantity term

Contractor agrees to supply all that the State- Agencies/Departments order.

1.6 Other Terms and Conditions

1.601 LICENSE and USE RESTRICTIONS

- A. Contractor grants a nonexclusive, nontransferable, limited license to access and use for research purposes the Online Services and Materials. This license includes:
 1. The right to electronically display Materials retrieved from the Online Services to no more than one person at a time, subject to the Supplemental Terms for Specific Materials;
 2. The right to obtain a printout of Materials via printing commands of the Online Services and to create a single printout of Materials downloaded via downloading commands of the Online Services (collectively, "Authorized Printouts");
 3. With respect to Materials that are court cases, court rules, court briefs, agency-issued documents, agency regulations or executive branch materials from the United States, its states or territories (collectively, "Authorized Legal Materials"), the right to retrieve via downloading commands of the Online Services and store in machine-readable form, primarily for one person's exclusive use, a single copy of insubstantial portions of those Materials included in any individual file to the extent the storage of those Materials is not further limited or prohibited by the Supplemental Terms for Specific Materials;
 4. With respect to Materials that are United States patents ("Authorized Patent Materials"), the right to retrieve via downloading commands of the Online Services and store in machine-readable form, primarily for one person's exclusive use, a single copy of not more than 200 patents at any one time; and
 5. With respect to all Materials other than Authorized Legal Materials and Authorized Patent Materials, the right to retrieve via downloading commands of the Online Services and store in machine-readable form for no more than 90 days, primarily for one person's exclusive use, a single copy of insubstantial portions of those Materials included in any individual file to the extent the storage of those Materials is not further limited or prohibited by the Supplemental Terms for Specific Materials.



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- E. Except as specifically provided herein, the State will not use the Online Services or materials retrieved from the Online Services in any fashion that infringes the copyrights or proprietary interests therein.
- F. The State will not remove or obscure the copyright notice or other notices contained in Materials retrieved from the Online Services.
- G. The State will not use information included in the Online Services or Materials retrieved from the Online Services to determine a consumer's eligibility for (1) credit or insurance for personal, family, or household purposes; (2) employment; or (3) a government license or benefit.
- H. Other provisions that govern use of Contractor's materials are established the Supplemental Terms for Specific Materials, online descriptions of files, online notices following file selection, and individual documents retrieved from the Online Services (collectively, the "Additional Terms").

1.602 ACCESS TO SERVICES

- A. Only individuals authorized by the State may access and use the Contractor's Online Services; State's user ID's may be individually suspended w/o any notice if a user violates the terms of the agreement, under Contractor's discretion, to then follow Contractor's resolution protocol.
- B. State will not use an identification number to access the Online Services from outside the country from which it was issued.
- C. State users' identification number(s) may be restricted from accessing certain Materials otherwise available in the Contractor's online services.
- D. Third party Materials and features may be added to or removed from the Online Services and the Online Services otherwise changed without notice.
- E. All access to and use of the Online Services via mechanical, programmatic, robotic, scripted or any other automated means is strictly prohibited. Use of the Online Services is permitted only via manually conducted, discrete, individual search and retrieval activities.
- F. Each of Contractor's third party supplier of materials has the right to assert and enforce these provisions directly on its own behalf.
- G. Contractor may immediately terminate or suspend an individual's ID if Contractor, in good faith, believes (1) the ID has been compromised; or, (2) there has been an infringement or misappropriation of contractor's data; or (3) there is a violation of § 1.6, *Other Terms & Conditions*, that would warrant such action. Failure of Contractor, or any third party supplier of materials to Contractor, to enforce any provision shall not constitute or be construed as a waiver of such provision or the right to enforce it at a later time.

Comment [ms11]: Paul Doles will have to have someone else review the insurance. E.g., subrogation, etc.; Malynda will follow-up Risk Mngt and AG

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**1.603 AUTHORIZED USERS**

"Authorized User" means an individual to whom the State assigns an LN identification number under a Participating Billgroup ("LN ID"). Only the State's employees, temporary employees, and contractors are eligible to be "Authorized Users." The State agrees that each Contractor's ID may only be used by the Authorized User to whom it is assigned and may not be shared with or used by any other person, including other Authorized Users. The State will manage its roster of Authorized Users and will promptly notify Contractor to deactivate an Authorized User's ID if that Authorized User no longer is eligible or if the State otherwise wishes to terminate the Authorized User's access to the services. The State is responsible for all of its use of the Services accessed with authorized user IDs, including associated charges, and for use of these services by temporary employees and contractors to the same extent as if they were employees. The State will implement policies and procedures (consistent and subject to the Department of Information Technology's policies and procedures) to prevent unauthorized use of Contractor's assigned IDs and will immediately notify Contractor, in writing, if it suspects that an ID is lost, stolen, compromised, or misused.

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2. Warranty Activities: Using the materials to identify specific records (e.g. odometer readings, transfer of ownership) associated with a VIN number to identify whether or not a vehicle is still under warranty and providing this determination to, or in connection with motor vehicle manufacturers, independent warranty or service contract providers.
3. Customer Surveys: Using the materials to identify owners of a specific make, model and/or category of vehicle(s) for the purpose of conducting primary consumer research (e.g. telephone interviews, mail surveys) to determine consumer automobile preferences and/or vehicle purchasing trends.
4. Vehicle Statistics: Using the materials to compile periodic new and/or used vehicle statistics (e.g. recent sales, vehicles in operation) by geography, vehicle classification, dealer, lender, and/or make/model for the purpose of automobile market share reporting for manufacturers and dealers, indirect lending market share reporting for automotive lenders, retail site planning, promoting automotive brands or dealerships to consumers, and/or dispute resolution between retailers and manufacturers.
5. Share of Garage Analysis: Using the materials to determine the current vehicles owned by an individual, household or group for the purposes of market research or direct marketing, or determining vehicle purchasing patterns over time (e.g. frequency of purchases, loyalty to specific brands).
6. Vehicle Ownership Profiles/Modeling: Using the materials to build direct marketing models for the purpose of promoting vehicles and auto financing products to consumers.



7. Vehicle History Reports: Augmenting the materials with accident data, odometer readings, emission readings or state issued vehicle brand data for of purpose of developing a 'Vehicle History Report' competing against AutoCheck and CARFAX by providing vehicle valuations to potential buyers, sellers, dealers, Original Equipment Manufacturers, auction houses or financiers of automobiles, but expressly excluding any VIN reports to insurers for underwriting purposes. This in no way limits your ability to use the materials to verify the vehicle(s) owned by a consumer or business or to assess the value of vehicles during the process of underwriting, policy auditing, adjusting, examining or settling of a property claim.
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Contract is for providing access service to legal and specialty databases. Exact quantities to be purchased are unknown, however the Contractor will be required to furnish all such materials and services as may be ordered during the CONTRACT period. Quantities specified if any, are estimates based on prior purchases, and the State is not obligated to purchase in these or any other quantities. Orders for delivery will be issued directly to the Contractor by various State Agencies on the Purchase Order Contract Release Form.

2.002 ISSUING OFFICE AND CONTRACT ADMINISTRATOR

The Contract is issued by Purchasing Operations, State of Michigan, Department of Management and Budget, hereinafter known as Purchasing Operations. Where actions are a combination of those of Purchasing and the State agencies, the authority will be known as the State.

Purchasing Operations is the sole point of contact in the State with regard to all procurement and contractual matters relating to the commodities and/or services described herein. Purchasing is the only office authorized to negotiate, change, modify, amend, alter, clarify, etc., the specifications, terms, and conditions of the Contract. Purchasing Operations will remain the SOLE POINT OF CONTACT throughout the procurement process.

Contractor proceeds at its own risk if it takes negotiation, changes, modification, alterations, amendments, clarification, etc., of the specifications, terms, or conditions of the Contract from any individual or office other than Purchasing Operations and the listed Contract Administrator

All communications covering this procurement must be addressed to contract administrator indicated below:

Department of Management and Budget
Purchasing Operations
ATTN: Malynda Little
2nd Floor, Mason Building
P.O. Box 30026
Lansing, Michigan 48909
(517) 373-8622
littlem3@michigan.gov

2.003 NOTICE

Any notice given to a party under this Contract must be written and 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.

LexisNexis, a division of Reed Elsevier Inc.
Attn: Chief Legal Officer
125 Park Avenue, 23rd Floor
New York, NY 10017
Phone: (212) 309- 8144
Fax: (212) 309- 5401



With a copy to:

LexisNexis, a division of Reed Elsevier Inc.
Attn: Customer Legal Services
9443 Springboro Pike
Miamisburg, OH 45342
Phone: (937) 865-6800
Fax: (937) 865-1211

2.004 CONTRACT TERM

The term of this Contract will be for approximately one (1) year, and will commence with the issuance of a Contract. This Contract term is from 11/15/2008 through 12/31/2009.

Option(s): The State reserves the right to exercise four (4) one-year options to renew this agreement, at the sole option of the State. Contractor performance, quality of products, price, cost savings, and the contractor's ability to deliver on time, are some of the criteria that will be used as a basis for any decision by Purchasing Operations to exercise an option.

Extension: At the sole option of the State, the contract may also be extended. Contractor performance, quality of products, price, cost savings, and the contractor's ability to deliver on time are some of the criteria that will be used as a basis for any decision by Purchasing to exercise an option year.

Written notice will be provided to the Contractor within 30 days, provided that the State gives the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the State to an extension. If the State exercises this option, the extended contract shall be considered to include this option clause.

2.005 GOVERNING LAW

The Contract shall in all respects be governed by, and construed in accordance with, the laws of the State of Michigan. By signing this agreement, vendor consents to personal jurisdiction in the state of Michigan. Any dispute arising herein shall be resolved in the State of Michigan.

2.006 APPLICABLE STATUTES

The following statutes, rules, and laws are applicable to the performance of this contract; some statutes are reflected in the clauses of this contract. This list is NOT exhaustive.

MI Uniform Commercial Code (MIUCC) MCL 440. (All sections unless otherwise altered by agreement)
MI OSHA MCL §§ 408.1001 – 408.1094
Freedom of Information Act (FIOA) MCL §§ 15.231, et seq.
Natural Resources and Environmental Protection Act MCL §§ 324.101, et seq.
MI Consumer Protection Act MCL §§ 445.901 – 445.922
Laws relating to wages, payments of wages, and fringe benefits on state projects MCL §§ 408.551 – 408.558, 408.471 – 408.490, 1965 PA 390.
Department of Civil Service Rules and regulations
Elliot Larsen Civil Rights Act MCL §§ 37.2201, et seq.
Persons with disabilities Civil Rights Act MCL §§ 37.1101, et seq.
MCL §§ 423.321, et seq.
MCL § 18.1264 (law regarding debarment)
Davis-Bacon Act (DBA) 40 USCU §§ 276(a), et seq.
Contract Work Hours and Safety Standards Act (CWHSSA) 40 USCS § 327, et seq.
Business Opportunity Act for Persons with Disabilities MCL §§ 450.791 – 450.795
Rules and regulations of the Environmental Protection Agency
Internal Revenue Code



Rules and regulations of the Equal Employment Opportunity Commission (EEOC)
The Civil Rights Act of 1964, USCS Chapter 42
Title VII, 42 USCS §§ 2000e et seq.
The Americans with Disabilities Act (ADA), 42 USCS §§ 12101 et seq.
The Age Discrimination in Employment Act of 1967 (ADEA), 29 USCS §§ 621, 623 et seq.
The Old Workers Benefit and Protection Act of 1990 (OWBPA), 29 USCS §§ 626, et seq.
The Family Medical Leave Act of 1993 (FMLA), 29 USC §§ 651 et seq.
The Fair Labor Standards Act (FLSA), 29 USC §§ 201 et seq.
Pollution Prevention Act of 1990 (PPA) 42 U.S.C. §13106
Sherman Act, 15 U.S.C.S. § 1 et seq.
Robinson-Patman Act, 15 U.S.C.S. § 13 et. seq.
Clayton Act, 15 U.S.C.S. § 14 et seq.

2.007 RELATIONSHIP OF THE PARTIES

The relationship between the State and the Contractor is that of client and independent Contractor. No agent, employee, or servant of the 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. The Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants and subcontractors during the performance of this Contract.

2.008 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 this Contract.

2.009 MERGER

This document constitutes the complete, final, and exclusive agreement between the parties. All other prior writings and negotiations are ineffective.

2.010 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.

2.011 SURVIVORSHIP

Any provisions of the Contract that impose continuing obligations on the parties including, but not limited to the Contractor's indemnity and other obligations shall survive the expiration or cancellation of the Contract for any reason.

2.012 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.

2.013 PURCHASE ORDERS

Orders for delivery of commodities and/or services may be issued directly by the State Departments through the issuance of a Purchase Order Form referencing this Contract (Blanket Purchase Order) agreement and the terms and conditions contained herein. Contractor is asked to reference the Purchase Order Number on all invoices for payment.

**2.1 Vendor / Contractor Obligations****2.101 ACCOUNTING RECORDS**

Contractor and all subcontractors shall maintain all pertinent financial and accounting records and evidence pertaining to the Contract in accordance with generally accepted principles of accounting and other procedures specified by the State of Michigan. Financial and accounting records shall be made available, upon request, to the State of Michigan, its designees, or the Michigan Auditor General at any time during the Contract period and any extension thereof, and for three years from expiration date and final payment on the Contract or extension thereof.

2.102 NOTIFICATION OF OWNERSHIP

A. Contractor shall make the following notifications in writing:

1. When the Contractor becomes aware that a change in its ownership or officers has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify Purchasing within 30 days.
2. The Contractor shall also notify the Purchasing 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.

B. Contractor shall:

1. Maintain current, accurate, and complete inventory records of assets and its costs;
2. Provide Purchasing or designated representative ready access to the records upon request;
3. Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership or officer changes; and
4. Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership or officer change.

2.103 SOFTWARE COMPLIANCE-RESERVED**2.104 RESERVED****2.105 PERFORMANCE AND RELIABILITY EVALUATION (PARE)-RESERVED****2.106 PREVAILING WAGE-RESERVED****2.107 PAYROLL AND BASIC RECORDS-RESERVED****2.108 COMPETITION IN SUB-CONTRACTING**

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

2.109 CALL CENTER DISCLOSURE – RESERVED**2.2 Contract Performance****2.201 TIME IS OF THE ESSENCE – RESERVED**



2.202 CONTRACT PAYMENT SCHEDULE

All invoices should reflect actual work done. Specific details of invoices and payments will be agreed upon between the Contract Administrator and the Contractor after the proposed Contract Agreement has been signed and accepted by both the Contractor and the Director of Purchasing, Department of Management & Budget. This activity will occur only upon the specific written direction from Purchasing.

The specific payment schedule for any Contract(s) entered into, as the State and the Contractor(s) will mutually agree upon the result of this Contract. The schedule should show payment amount and should reflect actual work done by the payment dates, less any penalty cost charges accrued by those dates. As a general policy statements shall be forwarded to the designated representative by the 15th day of the following month.

Unless otherwise agreed in writing, 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., "Payments to Private Enterprises", 45-days after receipt.

2.203 POSSIBLE PROGRESS PAYMENTS – RESERVED

2.204 ADMINISTRATIVE FEE – RESERVED

2.205 ELECTRONIC PAYMENT AVAILABILITY

Electronic transfer of funds is MANDATORY for State contractors. Vendor is required to register with the State of Michigan Office of Financial Management so the State can make payments related to this Contract electronically at www.cpexpress.state.mi.us.

2.206 Mi-DEAL PROGRAM

Act Number 431 of the Public Acts of 1984 permits the State of Michigan, Department of Management and Budget, to provide purchasing services to any city, village, county, township, school district, intermediate school district, nonprofit hospital, institution of higher learning, or community or junior colleges. As a result of the enactment of this legislation, the Mi-DEAL Program has been developed. This program extends the use of State contracts to program members. The State agency must enter into an agreement with the State of Michigan to become authorized to participate, thus ensuring that local units of State secure a greater return for the expenditure of public funds. It is the policy of Purchasing Operations, Department of Management and Budget, that the final approval to utilize any such Contract in this manner must come from the Contract vendor.

In such cases, Contract vendors supply merchandise at the established State of Michigan Contract prices and terms. Inasmuch as these are non-State agencies, all purchase orders will be submitted by, invoices will be billed to, and the authorized MiDEAL member on a direct and individual basis in accordance with Contract terms will remit payment.

It is the responsibility of the Contractor to ensure the non-State agency is an authorized MiDEAL member prior to extending the State Contract price.

2.3 Contract Rights and Obligations

2.301 INCURRING COSTS

State of Michigan is not liable for any cost incurred by the Contractor prior to signing of the Contract. The State fiscal year is October 1st through September 30th. Contractor should realize that payments in any given fiscal year are contingent upon enactment of legislative appropriations. Total liability of the State is limited to terms and conditions of the Contract.



2.302 CONTRACTOR RESPONSIBILITIES

Contractor will be required to assume responsibility for all contractual activities, whether or not that Contractor performs them. Further, the State will consider the Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the anticipated Contract. If any part of the work is to be subcontracted, the Contract must include a list of subcontractors, including firm name and address, contact person and a complete description of work to be subcontracted. The State reserves the right to approve subcontractors and to require the Contractor to replace subcontractors found to be unacceptable. Contractor is totally responsible for adherence by the subcontractor to all provisions of the Contract. Any change in subcontractors must be approved by the State, in writing, prior to such change.

2.303 ASSIGNMENT AND DELEGATION

Contractor shall not have the right to assign this Contract, to assign its rights under this contract, 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 State. Any purported assignment in violation of this Section shall be null and void. Further, the Contractor may not assign the right to receive money due under the Contract without the prior written consent of the Director of Purchasing.

Contractor shall not delegate any duties or obligations under the Contract to a subcontractor other than a subcontractor named and approved in the bid unless the Director of Purchasing has given written consent to the delegation.

2.304 TAXES

Sales Tax: For purchases made directly by the State of Michigan, the State is exempt from State and Local Sales Tax. Prices shall not include such taxes. Exemption Certificates for State Sales Tax will be furnished upon request.

Federal Excise Tax: The State of Michigan may be exempt for Federal Excise Tax, or such taxes may be reimbursable, if articles purchased under this Contract are used for the State's exclusive use. Certificates exclusive use for the purposes of substantiating a tax-free, or tax-reimbursable sale will be sent to the Contractor upon request. If a sale is tax exempt or tax reimbursable under the Internal Revenue Code, prices shall not include the Federal Excise Tax.

The State's Tax Exempt Certification is available for vendor viewing upon request to the Contract Administrator.

2.305 INDEMNIFICATION

A. General Indemnification

To the extent permitted by law, the Contractor must 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. Employee Indemnification

In any 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 must 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.



C. Patent/Copyright Infringement Indemnification

To the extent permitted by law, the Contractor must 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 the 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 the equipment, software, commodity or service, or the use or reproduction of any documentation provided with the 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 must at the Contractor's sole expense (i) procure for the State the right to continue using the equipment, software, commodity or service or, if the 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 the 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 has 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; (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.

D. Continuation of Indemnification Obligations

The Contractor's duty to indemnify under 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 before expiration or cancellation.

E. Indemnification Procedures

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

1. After the State receives notice of the action or proceeding involving a claim for which it will seek indemnification, the State must promptly notify Contractor of the 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. Failure to notify the Contractor does not relieve the Contractor of its indemnification obligations except to the extent that the Contractor can prove damages attributable to the failure. Within 10 days following receipt of written notice from the State relating to any claim, the Contractor must 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 before the State receiving Contractor's Notice of Election, the State is entitled to defend against the claim, at the Contractor's expense, and the Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during that period.



2. If Contractor delivers a Notice of Election relating to any claim: (i) the State is entitled to participate in the defense of the claim and to employ counsel at its own expense to assist in the handling of the claim and to monitor and advise the State about the status and progress of the defense; (ii) the Contractor must, at the request of the State, demonstrate to the reasonable satisfaction of the State, the Contractor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) the Contractor must periodically advise the State about the status and progress of the defense and must obtain the prior written approval of the State before entering into any settlement of the claim or ceasing to defend against the claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State has the right, at its own expense, to control the defense of that portion of the claim involving the principles of Michigan governmental or public law. But the State may retain control of the defense and settlement of a claim by notifying the Contractor in writing within 10 days after the State's receipt of Contractor's information requested by the State under clause (ii) of this paragraph if the State determines that the Contractor has failed to demonstrate to the reasonable satisfaction of the State the Contractor's financial ability to carry out its defense and indemnity obligations under this Section.

Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State under 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.

3. 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 may defend the claim in the 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 must promptly reimburse the State for all the reasonable costs and expenses.

F. 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 man-made disaster.

2.306 LIMITATION OF LIABILITY

Except as set forth herein, neither the Contractor nor the State shall be liable to the other party for indirect or consequential damages, even if such party has been advised of the possibility of such damages. Such limitation as to indirect or consequential damages 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; to Contractor's indemnification obligations (2.305); or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

- A. Neither the Contractor nor the State is liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability does 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.



- B. The Contractor's liability for damages to the State is limited to two times the value of the Contract. The foregoing limitation of liability does 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.

2.307 CONTRACT DISTRIBUTION

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

2.308 FORM, FUNCTION, AND UTILITY-RESERVED

2.309 ASSIGNMENT OF ANTITRUST CAUSE OF ACTION

For and in consideration of the opportunity to submit a quotation and other good and valuable consideration, the Contractor hereby assigns, sells and transfers to the State of Michigan all rights, title and interest in and to all causes of action it may have under the antitrust laws of the United States or this State for price fixing, which causes of action have accrued prior to the date of payment and which relate solely to the particular goods, commodities, or services purchased or procured by this State pursuant to this transaction.

2.310 LIABILITY INSURANCE

A. Insurance

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.

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 coverage provided relative to this Contract/Purchase Order is 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. Companies that have been approved to do business in the State shall issue all policies of insurance required in this Contract.

See www.michigan.gov/cis

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

Before both parties sign the Contract or before the purchase order is issued by the State, the Contractor must furnish to the Director of Purchasing, 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 coverage afforded under the policies WILL NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED without 30 days prior written notice, except for 10 days for non-payment of premium, having been given to the Director of Purchasing, Department of Management and Budget. The notice must include the Contract or Purchase Order number affected and be mailed to: Director, Purchasing, 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.

Contractor is required to pay for and to 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)

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.

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

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

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

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: RESERVED.
7. Professional Liability (Errors and Omissions): RESERVED.
8. Fire and Personal Property Insurance: RESERVED.

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 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, but only to the extent of liabilities assumed by Contractor as set forth in Indemnification Section of this Contract, under each commercial general liability and commercial automobile liability policy. In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

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

2.311 WORKPLACE SAFETY

- A. In performing work under this Contract on State premises, the Contractor shall conform to any specific safety requirements contained in the Contract or as required by law or regulation. The Contractor shall take any additional precautions as the State may reasonably require for safety and accident prevention purposes. Any violation by the Contractor of such safety requirements, rules, laws or regulations shall be a material breach of the Contract subject to the cancellation provisions contained herein.



- B. In performing services for the State pursuant to this Contract, the Contractor shall comply with Department of Civil Service Rules 2-20 regarding Workplace Safety and 1-8.3 regarding Discriminatory Harassment. In addition, the Contractor shall comply with Civil Service Regulations governing workplace safety and discriminatory harassment and any applicable state agency rules on these matters that the agency provides to the Contractor. Department of Civil Service Rules and Regulations can be found on the Department of Civil Service website at www.michigan.gov/mdcs.

2.312 WORKPLACE DISCRIMINATION

Contractor represents and warrants that in performing services for the State pursuant to this Contract, the Contractor agrees not to discriminate against any employee or applicant for employment, with respect to their 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 handicap or disability. The Contractor further agrees that every subcontract entered into for the performance of any Contract or purchase order resulting here from will contain a provision requiring non-discrimination in employment, as herein specified, binding upon each subcontractor. This covenant is required pursuant to the Elliot Larsen Civil Rights Act, 1976 Public Act 453, as amended, MCL 37.2201, et seq., and the Persons With Disabilities Civil Rights Act, 1976 Public Act 220, as amended, MCL 37.1101, et seq., and any breach thereof may be regarded as a material breach of the Contract or purchase order.

Contractor hereby represents that in performing this contract it will not violate The Civil Rights Act of 1964, USCS Chapter 42, including, but not limited to, Title VII, 42 USCS §§ 2000e et seq.; the Americans with Disabilities Act (ADA), 42 USCS §§ 12101 et seq.; or The Age Discrimination in Employment Act of 1967 (ADEA), 29 USCS §§ 621, 623 et seq.; the Old Workers Benefit and Protection Act of 1990 (OWBPA), 29 USCS §§ 626 et seq.; the Family Medical Leave Act of 1993 (FMLA), 29 USC §§ 651 et seq.; or the Fair Labor Standards Act (FLSA), 29 USC §§ 201 et seq.

2.313 RESERVED

2.314 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.

2.4 Contract Review and Evaluation

2.401 CONTRACT ADMINISTRATOR

Upon receipt at Purchasing Operations of the properly executed Contract agreement(s), the person named below for each individual State agency or department will be allowed to oversee the Contract performance on a day-to-day basis for that specific agency or department, during the term of the Contract. However, overseeing the Contract implies **no authority to negotiate, change, modify, clarify, amend, or otherwise alter the terms, conditions, and specifications of such Contract(s); that authority is retained by Purchasing Operations.** The Contract Administrator for this project is the assigned DMB Buyer.

The following list includes, but is not limited to, the assigned individual Agency and Departmental contacts:

- Attorney General:
Ms. Socorro Guerrero and Ms. Cindy Fournier
- Department of Community Health
Ms. Laura Dotson



- Department of Corrections
Mr. Rich Stapleton and Ms. Marsha Stansfield
- Department of Civil Rights
Mr. Dan Levy
- Department of Education
Ms. Mary Beckwith
- Department of History, Arts, and Libraries
Ms. Elaine Harrison
- Department of Human Services
Mr. Lutrell Levingston and Ms. Rita Hotchkin
- Department of Labor & Economic Growth
Ms. Karin Eirosius and Ms. LeAnn Droste
- Department of Management and Budget
Mr. Dave Quigley
- Department of Michigan State Police
Ms. Vickie Olivarez
- Department of Transportation
Mr. Rick Dolan
- Department of Treasury
Mr. Tom Falik
- Gaming Control Board
Ms. Marina Kotsifis
- Secretary of State
Ms. Barb Mazner

2.402 PERFORMANCE REVIEWS

Purchasing Operations, in conjunction with any Executive State of Michigan Department, Agency, etc., may review with the Contractor their performance under the Contract. Performance reviews shall be conducted quarterly, semi-annually or annually depending on Contractor's past performance with the State. Performance reviews shall include, but not limited to, quality of products/services being delivered and provided, timeliness of delivery, percentage of completion of orders, the amount of back orders, status of such orders, accuracy of billings, customer service, completion and submission of required paperwork, the number of substitutions and the reasons for substitutions, and other requirements of the Contract.

Upon a finding of poor performance, which has been documented by Purchasing, the Contractor shall be given an opportunity to respond and take corrective action. If corrective action is not taken in a reasonable amount of time as determined by Purchasing, the Contract may be canceled for default. Delivery by the Contractor of unsafe and/or adulterated or off-condition products to any State agency is considered a material breach of Contract subject to the cancellation provisions contained herein.

2.403 AUDIT OF CONTRACT COMPLIANCE/ RECORDS AND INSPECTIONS

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. Contractor agrees to cooperate with the State during the audit and produce all records and documentation that verifies compliance with the Contract requirements.



2.5 Quality and Warranties

2.501 PROHIBITED PRODUCTS - RESERVED

2.502 QUALITY ASSURANCE - RESERVED

2.503 INSPECTION

All goods are subject to inspection and testing. In the event goods are defective in material or workmanship, or otherwise fail to meet the requirements of the Contract, the State shall have the right to reject the goods or retain the goods and correct the defects. The Contractor shall pay the State for expenses incurred in correcting defects. Rejected goods will be held for 45 days after delivery. The Contractor must arrange for the return of said goods, including paying for handling, packing, and transportation costs. The State has the authority to dispose of the goods without further liability to the State in the event the Contractor fails to make arrangements within the specified time period.

2.504 GENERAL WARRANTIES (goods) – RESERVED

2.505 CONTRACTOR WARRANTIES – RESERVED

2.506 STAFF-RESERVED

2.507 RESERVED

2.508 EQUIPMENT WARRANTY-RESERVED

2.509 RESERVED

2.6 Breach of Contract

2.601 BREACH DEFINED

Failure to comply with articles, sections, or subsections of this agreement, or making any false statement in this agreement will be considered a material breach of this agreement giving the state authority to invoke any and all remedies available to it under this agreement.

In addition to any remedies available in law and by the terms of this contract, if the Contractor breaches Sections 2.508, 2.509, or 2.510, such a breach may be considered as a default in the performance of a material obligation of this contract.

2.602 NOTICE AND THE RIGHT TO CURE

In the event of a curable breach by the Contractor, the State shall provide the Contractor written notice of the breach and a time period to cure said breach described in the notice. This section requiring notice and an opportunity to cure shall not be applicable in the event of successive or repeated breaches of the same nature or if the State determines in its sole discretion that the breach poses a serious and imminent threat to the health or safety of any person or the imminent loss, damage or destruction of any real or tangible personal property.

2.603 EXCUSABLE FAILURE

1. Neither party shall be liable for any default or delay in the performance of its obligations under the Contract if and to the extent such default or delay is caused, directly or indirectly, by: fire, flood, earthquake, elements of nature or acts of God; riots, civil disorders, rebellions or revolutions in any country; the failure of the other party to perform its material responsibilities under the Contract (either itself or through another contractor); 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 best efforts to recommence performance or observance whenever and to whatever extent possible without delay provided such party promptly notifies the other party in writing of the inception of the excusable failure occurrence, and also of its abatement or cessation.

2. If any of the above enumerated circumstances substantially prevent, hinder, or delay performance of the services necessary for the performance of the State's functions for more than 14 consecutive 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 from an alternate source, and the State shall not be liable for payments for the unperformed services under the Contract for so long as the delay in performance shall continue; (b) the State may cancel any portions of the Contract so affected and the charges payable hereunder shall be equitably adjusted to reflect those services canceled; or (c) the Contract will be canceled without liability of the State to the Contractor as of the date specified by the State in a written notice of cancellation to the Contractor.

The 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 as a result of the excusable failure condition. Defaults or delays in performance by the Contractor which are caused by acts or omissions of its subcontractors will not relieve the Contractor of its obligations under the Contract except to the extent that a subcontractor is itself subject to any excusable failure condition described above and the 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.

2.7 Remedies

2.701 CANCELLATION

The State may cancel 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:

- A. Material Breach by the Contractor. In the event that the Contractor breaches any of its material duties or obligations under the Contract, 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, 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 cancellation to the Contractor, cancel this Contract in whole or in part, for cause, as of the date specified in the notice of cancellation.

In the event that this Contract is cancelled for cause, in addition to any legal remedies otherwise available to the State by law or equity, the Contractor shall be responsible for all costs incurred by the State in canceling the Contract, including but not limited to, State administrative costs, attorneys fees and court costs, and any additional costs the State may incur to procure the services required by this Contract from other sources. All excess re-procurement costs and damages shall not be considered by the parties to be consequential, indirect or incidental, and shall not be excluded by any other terms otherwise included in the Contract.

In the event the State chooses to partially cancel this Contract for cause charges payable under this Contract will be equitably adjusted to reflect those services that are cancelled.



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

- B. Cancellation For Convenience By the State. The State may cancel this Contract for its convenience, in whole or part, if the State determines that such a cancellation is in the State's best interest. Reasons for such cancellation shall be left to the sole discretion of the State and may include, but not 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 Contract services no longer practical or feasible, and (c) unacceptable prices for additional services requested by the State. The State may cancel the Contract for its convenience, in whole or in part, by giving the Contractor written notice 30 days prior to the date of cancellation. If the State chooses to cancel this Contract in part, the charges payable under this Contract shall be equitably adjusted to reflect those services that are cancelled.
- C. Non-Appropriation. In the event that funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available. The 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 project. If funds are not appropriated or otherwise made available, the State shall have the right to cancel this Contract at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of cancellation to the Contractor. The State shall give the Contractor written notice of such non-appropriation or unavailability within 30 days after it receives notice of such non-appropriation or unavailability.
- D. Criminal Conviction. In the event the Contractor, an officer of the Contractor, or an owner of a 25% or greater share of the Contractor, is convicted of a criminal offense incident to the application for or performance of a State, public or private Contract or subcontract; or convicted of a criminal offense including but not limited to 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 the Contractor's business integrity.
- E. 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, section 5, and Civil Service Rule 7. 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.

2.702 RIGHTS UPON CANCELLATION

Termination Assistance: If this Contract (or any Statement of Work issued under it) is terminated for any reason prior to completion, Contractor agrees to provide for up to six (6) months after the termination all reasonable termination assistance requested by the State to facilitate the orderly transfer of such Services to the State or its designees in a manner designed to minimize interruption and adverse effect. Such termination assistance will be deemed by the parties to be governed by the terms and conditions of this Contract (notwithstanding its termination) other than any terms or conditions that do not reasonably apply to such termination assistance. Such termination assistance shall be at no additional charge to the State if the termination is for Contractor's Default pursuant to Section 2.602; otherwise, the State shall compensate Contractor for such termination assistance on a time and materials basis in accordance with the Amendment Labor Rates identified within this Contract agreement.

2.703 LIQUIDATED DAMAGES-RESERVED

2.704 STOP WORK-RESERVED

2.705 SUSPENSION OF WORK-RESERVED

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2.8 Changes, Modifications, and Amendments

2.801 APPROVALS

This Contract may not be modified, amended, extended, or augmented except by a writing executed by the parties hereto, and any breach or default by a party shall not be waived or released other than in writing signed by the other party.

2.802 TIME EXTENTIONS

Time extensions for contract changes will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of performance as described in the statement of work. The change order granting the time extension may provide that the contract completion date will be extended only for those specific elements related to the changed work and that the remaining contract completion dates for all other portions of the work will not be altered. The change order also may provide an equitable readjustment of liquidated damages under the new completion schedule. (Also see § 2.004, *Contract Term*.)

2.803 MODIFICATION

Purchasing reserves the right to modify this contract at any time during the contract term. Such modification may include changing the locations to be serviced, additional locations to be serviced, method or manner of performance of the work, number of days service is to be performed, addition or deletion of tasks to be performed, addition or deletion of items, and/or any other modifications deemed necessary. Any changes in pricing proposed by the Contractor resulting from the proposed changes are subject to acceptance by the State. Changes may be increases or decreases. **IN THE EVENT PRICES ARE NOT ACCEPTABLE TO THE STATE, THE CONTRACT SHALL BE SUBJECT TO COMPETITIVE BIDDING BASED UPON THE NEW SPECIFICATION.**

The State reserves the right to add an item(s) that is not described on the item listing and is available from the Contract vendor. The item(s) may be included on the Contract, only if prior written approval has been granted by Purchasing.

2.804 AUDIT AND RECORDS UPON MODIFICATION

DEFINITION: Records includes books, documents, accounting procedures and practices, and other data, regardless of whether such items are in written form, electronic form, or in any other form

Contractor shall be required to submit cost or pricing data with the pricing of any modification of this contract to the Contract Administrator in Purchasing. Data may include accounting records, payroll records, employee time sheets, and other information the state deems necessary to perform a fair evaluation of the modification proposal. Contract Administrator or authorized representative of the state shall have the right to examine and audit all of the contractor's records, including computations and projections, related to:

1. The proposal for modification;
2. The discussions conducted on the proposal, including those related to negotiation;
3. Pricing of the modification; or
4. Performance of the modification.

Contractor shall make available at its office at all reasonable times the materials described in the paragraphs above.

If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for three (3) years after any resulting final termination settlement.

**2.805 CHANGES**

- A. The State's Contract Administrator may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes:
 - 1. In the specifications (including drawings and designs);
 - 2. In the method or manner of performance of the work;
 - 3. In the State-furnished facilities, equipment, materials, services, or site; or
 - 4. Directing acceleration in the performance of the work.
- B. Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contract Administrator that causes a change shall be treated as a change order under this clause; Provided, that the Contractor gives the Contract Administrator written notice stating:
 - 1. The date, circumstances, and source of the order; and,
 - 2. That the Contractor regards the order as a change order.
- C. Except as provided in this clause, no order, statement, or conduct of the Contract Administrator shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.