

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

January 28, 2010

CHANGE NOTICE NO. 1
TO
CONTRACT NO. 071B8200228
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR		TELEPHONE (989) 791-0147 Christopher Furlo
Morley Companies, Inc. One Morely Plaza, P.O. Box 1908 Saginaw, MI 48603 chris.furlo@morley.net.com		
Contract Compliance Inspector: Patrick Huber (517) 335-1002 Principal Residence Exemption (PRE) Data Collections and Reporting Services Department of Treasury		BUYER/CA (517) 335-6481 Adam Koenigsknecht
CONTRACT PERIOD: From: July 15, 2008		To: March 31, 2014
TERMS N/A	SHIPMENT N/A	
F.O.B. N/A	SHIPPED FROM N/A	
MINIMUM DELIVERY REQUIREMENTS N/A		

NATURE OF CHANGE(S):

Effective immediately, this Contract is hereby EXTENDED for two (2) years from April 1, 2012, to March 31, 2014. The Contract value is INCREASED by \$407,284.00. All costs are hereby REDUCED by 5%.

NOTE: The DMB Buyer for this Contract is changed to Adam Koenigsknecht (517) 241-6481.

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

AUTHORITY/REASON:

Per agency request (PRF dated 12/7/09), vendor agreement (email dated 10/23/09), and DMB/Purchasing Operations' approval.

REVISED CURRENT AUTHORIZED SPEND LIMIT: \$1,152,624.00

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 DEPARTMENT OF MANAGEMENT AND BUDGET
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July 31, 2008

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Morley Companies, Inc. One Morely Plaza, P.O. Box 1908 Saginaw, MI 48603 chris.furlo@morleynet.com		
		BUYER/CA (517) 241-1916 Jim Wilson
Contract Compliance Inspector: Patrick Huber (517) 335-1002 Principal Residence Exemption (PRE) Data Collections and Reporting Services Department of Treasury		
CONTRACT PERIOD: From: July 15, 2008 To: March 31, 2012*		
TERMS	N/A	SHIPMENT N/A
F.O.B.	N/A	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A		

*Contract period includes up to nine months of developmental time with three years of data collection and system maintenance/hosting.

Current Authorized Spend Limit: **\$745,340.00**

**STATE OF MICHIGAN
 DEPARTMENT OF MANAGEMENT AND BUDGET
 PURCHASING OPERATIONS
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**CONTRACT NO. 071B8200228
 between
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Contract Compliance Inspector: Patrick Huber (517) 335-1002 <p style="text-align: center;">Principal Residence Exemption (PRE) Data Collections and Reporting Services Department of Treasury</p>	
CONTRACT PERIOD: From: July 15, 2008 To: March 31, 2012*	
TERMS N/A	SHIPMENT N/A
F.O.B. N/A	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	
MISCELLANEOUS INFORMATION: <p>*Contract period includes up to nine months of developmental time with three years of data collection and system maintenance/hosting.</p> <p>Current Authorized Spend Limit: \$745,340.00</p>	

<p>FOR THE CONTRACTOR:</p> <p style="text-align: center;">Morley Companies, Inc. _____ Firm Name</p> <p style="text-align: center;">_____ Authorized Agent Signature</p> <p style="text-align: center;">_____ Authorized Agent (Print or Type)</p> <p style="text-align: center;">_____ Date</p>	<p>FOR THE STATE:</p> <p style="text-align: center;">_____ Signature Jim Wilson, Buyer Specialist _____ Name/Title Services Division, Purchasing Operations _____ Division</p> <p style="text-align: center;">_____ Date</p>
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**STATE OF MICHIGAN
Department of Management and Budget
Purchasing Operations**

Contract No. 071B8200228
Principal Residence Exemption (PRE) Data Collection and Reporting Services

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



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Article 1 – Statement of Work (SOW)

1.0 Project Identification

1.001 PROJECT REQUEST

The purpose of this Contract is for Principal Residence Exemption data collection and reporting services.

1.002 BACKGROUND

Public Act 206 of 1893, the General Property Tax Act, provides an exemption from the 18-mill local school district operating tax for property that is owned and occupied by an owner as his or her principal residence (MCL 211.7cc). An owner may claim a principal residence exemption by filing an affidavit with his or her local tax-collecting unit of government (city or township) by May 1st of a given year. The exemption then is effective until the December 31st of the year in which the property ceases to be owned or occupied as the exemption claimant's principal residence.

For purposes of the General Property Tax Act, a principal residence is the one (1) place where a person has his or her true, fixed, and permanent home to which, whenever absent, he or she intends to return. Second homes, vacation homes, rental property, and that portion of mixed-use property not owned and occupied as a principal residence are not entitled to exemption. To ensure that an individual does not claim more than one (1) exemption, or does not claim an exemption upon ineligible property, the local assessor with whom an affidavit is filed may deny a new or existing exemption subject to the right of an owner to appeal that denial to the Michigan Tax Tribunal.

In 2003, the Michigan Legislature amended the General Property Tax Act to authorize counties to audit and, where appropriate, to deny principal residence exemptions (PRE) claimed within units of local government within a given county. A decision by a county to conduct audits must be made by the treasurer or equalization director of the county, with the concurrence by resolution of the county board of commissioners. Such a decision by a county is effective for a two (2)-year period at the conclusion of which the county may elect to extend its status, by October 1st of that year, for a subsequent two (2)-year period. In any county electing not to conduct principal residence audits, the Department of Treasury is responsible for doing so. The next two year cycle begins on October 1, 2007.

The Department has a current contract with Tax Management Associates, Inc. to design an audit methodology, and then conduct audits of principal residence exemptions within the counties in which this State is responsible for conducting such audits during calendar years 2006, 2007 and 2008. The counties for the 2006 property tax year follow: Alpena, Barry, Bay, Branch, Clare, Dickinson, Eaton, Emmet, Genesee, Hillsdale, Huron, Iosco, Iron, Jackson, Kalamazoo, Kalkaska, Lake, Luce, Mackinac, Macomb, Manistee, Mason, Monroe, Oceana, Oscoda, Roscommon, Sanilac, Shiawassee, Tuscola, and Wayne.

Public Act 345 of 2006, the General Government Appropriations Act, required the establishment of a statewide web-based principal residence exemption database. Specifically Section 947 of the Act provides, in part, as follows:

(3) The \$500,000.00 balance of the \$5,856,800.00 shall be used for the principal residence exemption compliance program. Along with other program costs, expenditures **shall include the development of a statewide web-based database created for the purpose of enforcing the principal residence exemption compliance program.** The department shall submit quarterly progress reports that include the number of exemptions denied and the revenue received under this program. The legislative auditor general shall complete a performance audit of the principal residence exemption compliance program prior to April 1, 2007. Revenue generated to the state from the principal residence exemption compliance program shall be used to reimburse the state general fund for the \$500,000.00 appropriation prior to any other allocation. Additional funds from the revenue enhancement program and carryforward appropriations may be used to support costs in excess of \$500,000.00.

Counties use specialized software for property assessment and taxation (e.g. Accucomp, BS & A Software, Manatron and Pontem Software). The Contractor must review current software usage by all counties to determine the most efficient and easiest way for the counties to provide information in an electronic format and then integrate the information into searchable format.



The end result of this Contract will be to create a statewide, web based, data collection/reporting system to be used by the State, local units, and county officials. Access for local units and counties would be limited to certain staff required as part of their job duties to audit PRE such as treasurers, assessors, and equalization directors and related staff on a read only basis. The Department will have the ability to update a "note" data field for each property on an ongoing basis to include denial information; additionally, the "note" data field would be viewable by the local units of government. There will need to be access control security as the data will not be available to the general public. Contractor will obtain the data from each county in a format that is easy for the county to download and export to Contractor; most likely, using existing software for the county to produce a tax roll. The Web site would need PRE information that is in an easily searchable format, with the ability to search by name, address, parcel number, local unit, and county.

1.1 Scope of Work and Deliverables

1.101 IN SCOPE

The objective of this Contract is to retain the services of a qualified, independent contractor, acting as the authorized representative of the State, to assist the Department in data collection, query, and ad hoc reporting for principal residence exemption records during the tax years of 2008, 2009 and 2010. Services

The Contractor will assist with integrating data from county property tax records. Most counties use specialized software for property tax data. The Contractor will develop a methodology for the local unit and county treasurers and assessors to search/query the data. The Contractor will host a web site – separate from the Department of Treasury – for the Department and local unit officials (i.e. assessors and treasurers) to be able to perform data queries.

1.102 OUT OF SCOPE

Auditing the PRE information is covered under a separate contract.

1.103 TECHNICAL ENVIRONMENT

Information technology (IT) standards are referenced in section 2.051.

1.104 WORK AND DELIVERABLE

The following is a preliminary listing of the major tasks involved for developing the end product of this project. However, the Contractor is not constrained from supplementing this listing through additional steps, sub tasks, or elements deemed necessary to permit the development of alternative approaches, or the application of proprietary techniques.

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

1. Annually acquire in an electronic format tax roll information from all 83 counties. The following, but not limited to, data must be collected:
 - Taxpayer name(s)
 - Owner name(s)
 - Property address
 - County name
 - Local unit of government
 - Tax-billing address
 - Parcel identification number
 - Legal description
 - Classification



- Percentage of principal residence exemption
- Taxable value for each parcel of property upon which such an exemption is claimed.

Morley will work closely with the State of Michigan Principal to establish the proper communication that will be sent to each of the counties explaining how the data collection process will happen. Morley anticipates that the initial communication will be in the form of a letter. Morley will then perform follow-up phone calls to those counties not responding within the required time frames. Morley will then launch a SFTP (Secured File Transfer Protocol) Web site application for all of the 83 counties. Morley will then work with each of the counties to assist them with the process of uploading data to the SFTP repository. The initial communication will include the appropriate user IDs and passwords for accessing this application.

Morley will acquire all of the above-stated data elements into the centralized database on an annual basis.

- a. Other data fields may be needed based on each counties tax roll records in addition to those identified in section 1.104.1.

Morley will design the data collection/import feature to accommodate future changes. Additional fields will be appended to the end of the record layout and an appropriate default value will be given to each new field. Morley foresees no limitations regarding data field additions for the future. Morley's database modeling methodology anticipates the necessity for data field amendments to provide for normal data model modifications with every Web application Morley develops for its clients.

- b. Tax roll information collection must commence as soon as the Contract is in place; however, it must be collected no later than June 15th of the first contract year. After the first year, data will be collected by January 31 from all counties.

Once the tax information is received from each county into the SFTP repository, Morley will then analyze this data for compatibility and mapping to the centralized database. During this analysis, Morley will utilize our standard data-mapping audit and quality assurance processes. This will allow us to ensure that the data is in the expected format and that final record counts will then be communicated back to the county. If for any reason there is an error with the data received from the county, the Morley Project Manager will then do a quick assessment of the problem that is reported and contact the county to help guide them through the appropriate resolution as well as assist with the upload process if needed. Our project plan outlines the timeline that Morley will follow. Morley will commit to a deadline of June 15 or as soon as possible after Contract execution for the first year and January 31 for subsequent years. Morley's research division (Morley Research) has proactively surveyed the 83 counties to assess the existing property software systems currently in use at each county. Based on our survey, Morley has also determined that 99% of the counties are Web enabled and that over 32% of counties state that they could provide us with the data download in two hours or less. Based on this information, Morley has concluded that meeting the deadline of June 15 or as soon as possible after Contract execution will not be an issue.

- c. Collect data via various electronic methods from counties in a secure electronic communication via file uploads, file transmissions, or other electronic options for related PRE tax roll information. Note that the property tax roll information being collected is public information. Regardless, the Department is requesting that security of the information be maintained and not made available to the general public. The tax roll information collected may only be used by the contractor for complying with this Contract.

Morley is capable of handling many different file formats. Morley Research has proactively surveyed the 83 counties to assess the existing property software systems currently in use at each county. After conducting this survey, Morley has concluded that the best method of uploading these various file formats would be through a SFTP (Secured File Transfer Protocol) Web site application or receiving data via CDs. Morley will design a user-friendly data upload utility with data format selections for the counties to use or upload data on the counties behalf via CD. The system will include in-depth help screens, online documentation and user tutorials to help guide the counties through this upload process. Morley currently receives data files from our many clients in a multitude of formats and is well versed in data conversion, data mapping and system integration. Morley will also provide help desk assistance for this file upload process during the normal business hours of 8 a.m. - 5 p.m. Eastern Time. If for any reason the county cannot use the upload process, Morley will work with the county to determine the best method of securely getting the data for processing into the centralized database.



Based on our survey results, Morley is aware that not all of the counties will have technical support people on site to do this process. Our Project Manager and help desk will be available to assist the counties. The user IDs and passwords that Morley sends to the counties in the initial communication will control access to this system. Each county will be able to see only their own files after they have uploaded them to the SFTP server. Once these files are processed, they will then be immediately removed from the system for security purposes.

2. Integrate data received from all eighty three (83) counties into a Web-based system to be used by the State, local units, and county officials to search principal residence exemptions and other tax roll information.

Morley will validate the data received from the county against the data templates and compare to the centralized database to make sure that it contains all of the data elements that are required by the State. If there is missing information, Morley will contact the county to resolve the issue and resend the feed. Once the data has passed validation, it will be loaded into the central database with date and time stamp. Unique, system-assigned IDs will be given to each record for internal control identification.

This centralized database will be the foundation for the Web application for dynamic searching and online reporting.

- a. Contractor must review county tax roll information data systems and determine/map each counties data field into centralized/standardized data field.

Morley Research has proactively surveyed each of the 83 counties. The results the survey showed that the following software applications are currently being used:

- AccuComp 1
- BS&A 56
- Equalizer – Appraisal 4
- Manatron 12
- Pontem 5
- Resource Info 1
- Resource Pontem 1
- Other 3
- **Total 83**

While working with the counties for the setup and export of the data, Morley will develop a template for each county that would be used to integrate its data into the central database. The templates will include the location layout of the data feed and its mapping into the central database. Those templates will be automated and stored in the SQL Server user packages.

Upon the receipt of the data, Morley will validate the feed against the template to make sure it is in the correct format. If the data is in the wrong format or if there is missing information, Morley will contact the county to resolve the issue and resend the feed. Once the data is validated, it will be loaded into the central database with date and time stamp of load time. Unique system assigned IDs will be given to each record.

Morley will contact each of the counties that are not using a common software package to make sure that the data extracted will be in the required format to properly map to the centralized database.

- b. Contractor must run edit checks and quality assurance steps to ensure data integrity before posting data to Web site.

After having verified the data mapping template for accuracy, Morley will conduct the following quality assurance procedures:



- Test external access to the SFTP server
- Test file upload to the SFTP server
- Test configured user ID and password for each of the counties
- Test accuracy of data integration into the centralized database for each data format template
- Test data integrity of 100% of test data
- Test process will be independently double verified

Morley has an established relationship with the Saginaw County Assessors Office. Saginaw County has agreed to act as a test site to assist us in our quality assurance process.

Morley will evaluate the data received into the SFTP repository after the data is uploaded from the county. Morley will conduct an audit on the data received as it compares to the template established for that county.

Once the data format is verified against the template, a 5% random sample of the data will be evaluated for data element accuracy.

Record counts are verified with those initially loaded.

If any of the data quality checks do not pass, Morley will contact the county and resolve the issue; then, the process will be repeated.

3. Develop a Web-based data integration system to be used by the State, local units, and county officials to search PRE and tax roll data. The Web site must provide tax roll data in an easily searchable format, with the ability to search by name(s), address, parcel number, local unit, and county.

Morley has developed hundreds of user-friendly centralized database Web applications for its clients. Morley will develop a Web-based data integration system to be used by the State that contains all of the integrated data collected from 83 counties. This online application will give the State users the ability to search by any data element through its search engine. The search will allow for global or specific data element search requests. In the future, as more fields are added, the search capability will expand to include those fields as well.

The online application will include a number of static reports agreed to by the State and Morley. Morley will give the State the ability to request ad hoc reports as needed to fulfill whatever need necessary. Ad hoc reports will be fulfilled within 2 business days if the data is available.

The online tax site will include a user-friendly search engine allowing the user the ability to search the entire database by one or many of the following fields. Global search capability will be supported. The following data elements will be searchable:

- Taxpayer name(s)
- Owner name(s)
- Property address
- County name
- Local unit of government
- Tax-billing address
- Parcel identification number
- Legal description
- Classification

The online system will also include management reporting capability. Reports will be developed showing the status of the counties' data upload processes. This report will show the counties that have uploaded their data, those that haven't, date and time of upload and number of records reported. This report will assist the State in the enforcement of compliance.



- a. Access for local units and counties will be limited to certain staff required for their job duties to audit PRE such as treasurers, equalization directors, and related staff on a read only basis. There will need to be access control security as the data will not be available to the general public.

The online application will utilize resource/role authorization. The initial page of the application will be a login screen requiring a user ID and password. Upon the entry of a user ID and password, the information is validated against the user database. Once in the application, the user resource/role will determine which Web application pages, menus and data will be accessible to the user.

The users' passwords will be encrypted in the database and a reset option will be available only for Morley to use upon a user's request.

This will ensure that every page is secure and is only accessible by the assigned role(s) associated with it. The resource/role methodology has been used by Morley in other secure Web applications with great results.

- b. Access control must include role-based user access (i.e. read-only, data entry, reporting access, etc.).

The online application will utilize resource/role authentication. This will allow each of the resources to be configured to specific roles allowing for flexibility in the future. The Web application will have read-only data entry (for notes), reporting and administrator roles.

The roles above will be assigned to users as selected by the State. These users/roles will be maintained in the central database and secured from tampering.

- c. The State will provide user administration to setup user IDs and passwords for system access.

Morley will work with the State to establish a system administrator user ID and password for managing the system access, user IDs and role assignments. The security module will be built with the following pre-established security rule sets:

- All passwords will be encrypted. Access to the passwords is not an option.
- Newly created user IDs will have an expired password requiring the user to change their password the first time they log in.
- Passwords cannot be looked up; they can only be reset to a new password if expired.
- Password expiration can be set at 30, 60 or 90 days.
- Once the password is expired, the user is prompted upon the next login to change the password and to confirm the change. Once the password has been reset, the user is once again given access to the system.

- d. Prior and current years' data must be maintained and searchable.

The centralized database will contain data for the current and prior years. The time stamp that is applied when the data is integrated will control the ability to determine which years data is being reviewed. Both current and prior years' data can be searched for audit and comparison.

Morley allows the user to search data up to three years prior to the year in use within the scope of the application. Morley understands that residents can only be audited three years back and this time frame will be sufficient.

4. Allow State department staff to enter notes for particular parcel identification number and county – preferably an Web-based option (ongoing).



Based on the user role and authorization, the Web application will allow certain users the ability to enter notes for a specific parcel. That information will be kept in the database along with the parcel information. Each note can be 1024 characters long and will have the date and time of when the notes were entered as well as the user ID of the person who entered them. Each parcel can have as many notes as needed and will be sorted by date and time entered.

Upon display of a parcel based off a search, a note icon will be available if the parcel has any notes associated with it. Depending on the user role, when the icon is clicked, a view of current notes is displayed with the ability to add new ones. Once the parcel is clicked into, all other information about the parcel will be displayed, including a link to the notes list.

5. As necessary, attend State meetings or conference calls with Department personnel no more than once per week.

Morley believes that frequent and open dialog between its clients and Morley fosters a strong working relationship that benefits both parties. We view this interaction essential, especially in the launch stages of a new program. As defined by the State in Question 49 of the Questions and Answers document for ITB #07118200056, approximately seven to 10 meetings are anticipated in the first contract year. Morley agrees with this assessment and our Project Manager will attend these meetings, bringing along support personal as or if needed. Further, Morley agrees that we should establish a quarterly meeting with the relevant State associates for all subsequent years of the contract. Conference calls will be scheduled, in addition to the above meetings as needed, to be determined by the Morley Project Manager or the State Contract Compliance Inspector.

Morley also recognizes the potential need to hold meetings with the Michigan counties to provide training for the new application and discuss potential implementation procedures. Where applicable, Morley will conduct Web meetings through the Web infrastructure associated with this program. On-site meetings will be conducted when needed.

Morley estimated Project Manager hours based on estimates from the State of Michigan concerning anticipated meeting times. If the State anticipates more meetings, our list Project Manager rate is \$125 per hour. Depending on the number of meetings beyond the 10 that the State anticipates, we can increase the pricing according to this rate. Morley does not charge for any travel expenses or pertinent individuals that accompany the Project Manager to these additional meetings.

6. Respond to numerous phone calls and email requests within one business day. Telephone support must be provided from 8:00 a.m. to 5:00 p.m. on business days.

Morley has been in the fulfillment business for almost a decade and currently runs a 200-seat call center that interacts with our fulfillment operations and program management on a regular basis. Morley has several existing client engagements that follow our proven business process, which is flexible enough to tailor to individual client needs. Morley currently manages call center applications for General Motors Reacquired Vehicle Disclosure Center (RVDC), CK Truck and OnStar, Dow Chemical TeleBuilder, and Nissan of North America, BMW of North America and Kia of North America Vehicle Services Processing Center (VSPC). Morley customer service representatives are familiar with both loyalty program redemption via Morley's online merchandise system, as well as direct customer interaction through a toll-free number or e-mail.

Implementing the PRE Data Collection Call Center at Morley will be a smooth and trouble-free process because the existing infrastructure is already in place and operational. Morley Research has conducted a survey of all 83 counties in Michigan and has met with the Equalization Director, Controller and Treasurer of Saginaw County. Through our discussions and research, Morley anticipates call volume to be heavy initially as counties have questions concerning the new database and system, and then to gradually decrease as the counties gain a familiarity with the process. Based on this projection, Morley will staff Customer Service Representatives (CSRs) from 8 a.m. - 5 p.m. Eastern Time as a help desk team to support this program and handle all incoming call and e-mails. Should call volume be larger than anticipated, Morley already has the internal resources in place to add additional CSRs to the program as needed. These will be added at no charge to the State as Morley expects call volume to be high initially and then to drop down to a level that can be managed by a single help desk CSR.



Morley routinely works with established talk times and service-level requirements in all its call center applications. A 24-hour window to respond to all phone and e-mail inquiries will be easily met. Often, Morley will answer the majority of inquiries much sooner than the 24-hour stipulation because we will have full-time, dedicated CSR for this program. This will provide the high level of support and efficiency that Morley strives to bring to its clients.

7. Contractor must comply with "Look and Feel Standards for e-Government Applications" at http://www.michigan.gov/documents/Look_and_Feel_Standards_2006_v3_166408_7.pdf.
8. The contractor must provide the physical and logical system access controls and security necessary to ensure secure access for the functions described in this CONTRACT. Physical and logical access controls for all facilities, equipment, and applicable systems must be addressed. The following national/international security standards and publications including, but not limited to, must be adhered to:
 - i. "National Standards: An Introduction to Computer Security", National Institute of Standards and Technology, Computer Resource Security Center (see <http://csrc.nist.gov/cc/index.html>)
 - ii. Interagency Guidelines Establishing Standards for Safeguarding Customer Information; Final Rule (12 CFR Part 30, et al).
 - iii. The following security control requirements must be addressed:
 - a) Management Controls
 - b) Operational Controls
 - c) Technical Controls.

Morley has reviewed the above-referenced materials. The following are Morley's security parameters and policies that Morley feels meet and exceed these standards.

Physical Security

All rooms and areas that house or contain data or proprietary collateral for our clients are physically locked with access to authorized personnel only.

All access points into the buildings, with the exception of our front doors, are controlled with proximity card access only. These cards are issued to our associates with the appropriate security controls such as limited access points and authorized time of entry. This access control system logs all access to the buildings and is reviewed on a periodic basis.

Our visitor policy is that all visitors must sign in at the receptionist's desk. No visitor is allowed past this point without escort by a Morley associate.

Data Security & Regulatory Controls

Morley utilizes various levels of security controls to regulate all access to client data for any system that Morley operates for its clients. Account Managers, in conjunction with Morley management, will determine the specific needs of data access for individuals that are appointed to work on the project on behalf of Morley's clients. All systems are designed to work with various levels of data access to control the processing of data in a secure manner.

Based upon State-specified control requirements, Morley will perform reviews to ensure that controls are maintained for client data with respect to the systems Morley operates for the State.

Morley employs data encryption for all Web applications that collect data. This is done through a secured server connection via Secure Sockets Layer (SSL). This type of encryption is the most secure and popular technology available in the Internet business world today. Morley utilizes SSL encryption to protect the privacy of its clients' personal information.



For data exchange, Morley highly recommends that any data that is personal, proprietary or confidential be encrypted before that data will be sent. Morley currently utilizes PGP encryption for data exchange. Morley will use whatever encryption method or tools the State dictates for secure data exchange.

Morley designs its proprietary applications with built-in controls to prevent and/or detect changes by unauthorized users to its customer files.

Morley-server operating systems are configured with controls to prevent and detect changes by unauthorized users to system software with respect to the systems Morley operates and controls for its clients. Morley's firewall also employs an intrusion detection system to prevent and detect unauthorized users attempting to gain access to Morley's private network.

Morley stores all passwords in encrypted form. Access to the password is not allowed; passwords can only be reset, not viewed. Passwords are set for expiration. Passwords cannot be reused. It is Morley's current practice to disable any user profiles after three invalid attempts.

- a. The contractor must provide audit trail functionality for all system changes.

Morley will utilize its change management system called Subversion for all Web application program control. Once the system is launched and goes live, a branch in Subversion is established to indicate Release 1.0. Every change made to the code set from that point on will be saved in Subversion with a message indicating the changes that are made. All code in Subversion is backed up on a nightly basis.

Morley will also utilize the State's change request form upon every request for a change once the application is live. Those documents will be saved and published on the Web server for online access.

- b. Audit trail reports must be available to authorized users via the Internet.

The centralized database will include a change request schema where all changes made to the system since the "go live" date are stored. Those changes will include date and time of the change along with the change description and the reason for the change.

The centralized change request audit report will be accessible only to specific users based on their system roles. Users will only have view access to those change requests, and if any questions arise, the Project Manager should be contacted.

- c. Web Application Security

The Contractor must establish adequate security controls for web application(s) to provide a high level of security to protect confidentiality of data transmitted over the public Internet. At no point will the data be unsecured in transit. The controls include, but are not limited to:

- Authentication
- Authorization and access control
- Web application and server configuration (e.g., patch management, deletion of unnecessary services, separation of the operating system and the web server)
- Session management (e.g., randomly generate unique session IDs, encrypt sessions, enforce session expiration date, establish time-out setting for inactive session)
- Input validation (e.g., avoid shell commands, system calls, and malicious codes),
- Encryption (e.g., protect confidential or sensitive information, encryption keys, passwords, shared secret),
 - The system shall use SSL (128 bit or higher) for secure communication between the user's browser and the system. SSL will be utilized for:



- Log-on process (authentication information -UserID and passwords)
- Specific field in the HTML forms and links (URLS) within the pages.
- Cookies
- Session id
- Confidential and sensitive data files
- Encryption keys, certificates, and passwords
- Audit log file.

- Audit logs (e.g., all authentication and authorization events, logging in, logging out, failed logins).

The online application will utilize SSL, authorization, authentication, password encryption, session management, audit logs, session ID and input validation. Those items will be utilized at different points of the application, including the following:

- The Web servers will utilize SSL for all data transactions.
 - The Web servers will be put on the update/batch schedule as all Morley servers are. Updates and batches will be applied as specified by the network administrators.
 - The Web application will be configured for session expiration after 30 minutes.
 - The Web application will be configured to not allow folder browsing of the server.
 - The Web application will only give access to users via the login page that requires a user ID and a password to establish authentication.
 - The Web application will use roles and resources given to users to establish authorization.
 - The Web application will encrypt user passwords.
 - The Web application can expire user passwords after 30, 60 or 90 days.
 - The Web application will save every user ID, IP address, and date and time of every login and log out into the central database.
 - The Web application will save every IP address and date and time of every failed login into the central database.
 - The Web application will log every user ID, IP address, and date and time of every invalid access to secure resources that are inaccessible to the user into the central database. An e-mail notification will also be sent to the Project Manager, informing them of the attempt.
 - The Web application will use the latest techniques for input validation to prevent code injection or security breaches. Those techniques include HTML tags stripping and prepared statements to prevent Structured Query Language (SQL) injections.
- d. Comply with Safeguard Requirements of Confidential Data (Exhibit A).

Morley has reviewed the Safeguard Requirements of Confidential Data and will comply fully with them. Some of what Morley will do to comply includes but is not limited to:

- User authentication and authorization of all users to prevent unauthorized access to the data.
- The central database will be completely secure and inaccessible except for the Project Manager, Network Administrator and Web Developer. No other Morley associates will have access to this database.



- A confidentiality message will be displayed on the login page notifying the user of the implications of unauthorized access.
- Morley will not print any hard copies of any of the tax information. Accessibility to this system will only be through the secured Web application.
- All access to the Web application will be logged into the central database and e-mail notifications of any attempted invalid access will be generated and sent to the Project Manager for immediate action.
- Morley uses SSL for all Web transactions.
- Morley employs user SFTP for all data feeds and loads.

9. Hosting Requirements

- a. The contractor must provide all data and reports to the users via an Internet browser, Microsoft Internet Explorer version 6.0 or later. No additional software or hardware will be required for the customer. This service will operate 24 hours a day, 7 days a week, but will be available 99% of the time between 8:00 a.m. and 5:00 p.m. eastern standard time on business days. Any interruptions in service over 30 minutes must be reported to the Contract Compliance Inspector with the following:
 - i. Length of interruption
 - ii. Reason for interruption
 - iii. Resolution and estimated time to resolve.

It is assumed that each user of this system will have a computer with Internet access. It is also assumed that each computer will have Microsoft Internet Explorer version 6.0 or later. Morley will develop and test all Web pages and functionality for use with IE 6.0 and IE 7.0. Morley will not require additional hardware or software of the users to operate this online application. The online application will require only a Web browser (IE 6 or IE 7).

Morley's Internet traffic is guaranteed by our service provider, AT&T. AT&T guarantees this OC3 Fiber Optic SONET Ring to be available up to 99.9999%, 24 hours a day, 7 days a week.

- b. The system response time for the end-user should not be excessively long. Data must populate within ten (10) seconds, and reports must populate within one (1) minute.

The Web application will be tested to ensure that every page is populated within the 10-second requirement. Every report will also be tested to ensure that it populates within one minute. Comparable Web applications developed for our clients typically populate data within two to five seconds per page, and within 30 seconds for reports. Performance will be accomplished by utilizing the latest relational database modeling design techniques and object-oriented programming. Morley will employ its standard utilities for unit, integration, regression and load testing to ensure that the Web application meets these requirements.

- c. All system upgrades will be provided at no additional cost during the term of the Contract.
- d. Any modifications to the reporting system need to be transparent to users and not require any updates on users' computers.



Morley will ensure that all changes made to the application once it is live, conform to IE 6 and 7 specifications. End users will not have the need to upgrade their computer systems. Morley will also ensure that all PDF versions of any report are compatible with the State's specifications.

- e. The Contractor is responsible for backing up the data at least daily. The contractor must provide a disaster recovery plan and the system must be available no more than 5 business days after a disaster..

Morley's day-to-day operations are guaranteed by an automated backup power generator in all of its facilities to ensure that none of Morley's clients experience a service stop. In fact, no client has ever experienced a service stop in the history of Morley. Each evening, a full-system backup of all Morley operations is performed and taken offsite to another facility to eliminate the possibility of ever losing any data needed by our enterprise-wide computer operations, even in the event of a natural disaster or fire at corporate headquarters. Morley's formal disaster recovery plan outlines detailed recovery procedures to be followed in the event of a natural disaster. Morley has disaster liability coverage with SunGard Data Corporation, which provides on-site computer system replacement at our offsite facility following the declaration of a disaster. The plan contains the emergency telephone numbers of key supplier personnel. A temporary headquarters, data and call center would be installed at a location in the Saginaw, Michigan, area following a disaster. This location is not utilized during non-disaster periods. It is estimated that full telephone, fax and computer operations of **ALL** Morley operations would be restored within 24 to 48 hours. The security required would include internal alarm operations and armed guards if necessary.

- f. The following is the architecture of hardware configuration and infrastructure of the computer system.

The server that will house the Web application consists of a clustered server environment with two Dell 2950s, each with 4GB of RAM, running Windows Server 2003. Attached to these servers is an EMC CX200 with 400GB of hard drive space. The server will reside in the Morley Enterprise Data Center, which is a secured facility with waterless fire suppression, uninterruptible power supply (UPS) and power-filtering capability.

- i. The following is the frequency of system upgrades and the date of the last major upgrade.

Morley does not anticipate any system upgrades to the servers supporting this Web-based application for the term of this contract. These new servers, which were installed in July of 2007, consist of state-of-the-art hardware technology that is running the most contemporary operating systems.

- ii. The following are the changes in the last major upgrade and an estimated date of the next major upgrade and what changes are expected at that time.

Morley does not anticipate the need for any major upgrade to the servers that we would be using to support this Web application for the term of this contract. These servers consist of state-of-the-art hardware technology that is running the most contemporary operating systems.

- g. The contractor will provide a full service level agreement within 48 hours of being awarded the Contract.

- h. The contractor must notify the Contract Compliance Inspector seven (7) days in advance of any scheduled downtime. All system outages/shutdowns must be reported immediately to the Contract Compliance Inspector or designee. Within twenty-four (24) hours of problem resolution and restart, the Contractor must 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 resolution to mitigate future occurrences.



Periodic maintenance to the servers is required to maintain operational and security integrity. This scheduled maintenance will be performed after normal business hours. Morley will notify the Contract Compliance Inspector seven days in advance of any scheduled downtime. All system outages/shutdowns will be reported as stated in the bidder's response to 9.a. above. Morley will 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 resolution to mitigate future occurrences.

- i. The contractor will be responsible for working with the State, local units of government and other contractors (e.g. Department of Information Technology, information technology systems contractors, etc.) to assist in problem resolutions including but not limited to, establishing new communications channels, downtime, testing, etc.

Morley's IT team is dedicated to resolving any internal or client issues. The IT team includes Web Developers, Network Administrators, Database Administrators, Application Developers and night operators. Morley will work with the different counties and their associated IT staff to resolve any and all issues pertaining to this project. Morley Research has already contacted the 83 counties and gathered preliminary information about the current software, Internet access and IT staff availability at each location. Morley will continue to work with the applicable staff members at the counties during the launch process. The Morley help desk will be available through the life of the contract to provide assistance for authorized users.

With its contacts in the Saginaw area, Morley has established a relationship with the Saginaw County Assessors office. Morley's team was able to meet with the Assessors office staff including their IT Chief Information Officer. With this relationship in place, Morley has been granted the ability to test any and all issues that might arise.

- j. In the event of Contract expiration or termination, all system data must be provided to the Department of Treasury within five (5) business days of request in a mutually agreeable format.

Morley is capable of providing the tax information in several formats, including but not limited to:

- XLS: Microsoft Excel document
- DOC: Microsoft Word document
- DOCX: Microsoft Word 2007 XML-based format
- MDE: Compiled Microsoft Database (Access)
- HTML: Hyper Text Markup Language (.html, .htm)
- Fixed-Length ASCII
- Tab-Delimited ASCII
- CSV: Comma-Separated Values
- MDF: Microsoft SQL Server Database
- RTF: Rich Text document
- STW: StarOffice/OpenOffice.org/NeoOffice text document template
- SXW: StarOffice/OpenOffice.org/NeoOffice text document
- XML: Extensible Markup Language.



1.2 Roles and Responsibilities

1.201 CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES

Morley's staff for this project will include the following qualified associates:

1. Project Manager: Ayman Rabi
Role to include:
 - a. Main contact for the 83 counties
 - b. Main contact for the State's Principal
 - c. Oversee SFTP setup, configuration, testing and accessibility
 - d. Oversee setup and testing of county mapping templates
 - e. Oversee central database design, implementation and testing
 - f. Oversee design, implementation and testing of archiving module
 - g. Oversee requirements gathering, design, implementation, testing and maintenance of the Web application
 - h. Oversee the design, testing and implementation of the quality control process
 - i. Oversee the risk management process
 - j. Oversee the change management process
 - k. Set up and attend all internal and external meetings regarding all aspects of the application

2. IT Web Developer: Todd Pratt
Role to include:
 - a. Lead the IT team for the setup and testing of county mapping templates
 - b. Lead the IT team for the central database design, implementation and testing
 - c. Lead the IT team for the design, implementation and testing of the archiving module
 - d. Lead the IT team for the requirements gathering, design, implementation, testing and maintenance of the Web application
 - e. Lead the IT team for data feed loads from the 83 counties
 - f. Lead the IT team for design, testing and implementation of the quality-control process

3. IT Network Specialist: Eric Kukulis
Role to include:
 - a. Lead the network team in SFTP setup, configuration, testing and accessibility
 - b. Lead the network team in Web servers setup and configuration
 - c. Lead the network team in database servers setup and configuration
 - d. Lead the network team in URL purchase and setup
 - e. Lead the network team in maintaining servers

4. Customer Service Representatives (CSRs): Dedicated Morley CSRs are assigned to the project and become a "front office help desk" for processing any inquiries.
Role to include:
 - a. Have a full understanding of project operational and workflow processes
 - b. Conduct inbound and outbound communication as directed
 - c. Organize, collect and enter data information received from multiple inbound and outbound communications
 - d. Maintain e-mail file and respond to e-mail communications in accordance with project-specific guidelines
 - e. Research, resolve and follow up on all open cases and customer issues as directed
 - f. Meet prescribed deadlines and timelines



Organizational Chart

Ayman Rabi Project Manager	Customer Service Representatives
Todd Pratt IT Web Developer	
Eric Kukulis IT Network Specialist	

1.202 STATE STAFF, ROLES, AND RESPONSIBILITIES

1. Contract Compliance Inspector (see section 2.015 of Contract) will provide overall project management for the State on a day-to-day basis.
2. Users: Approximately ten (10) State staff will need system access to query and update data.

1.203 OTHER ROLES AND RESPONSIBILITIES

1. Users: Local Units of Government for read-only access to data. There are currently 1,242 townships, 274 cities and 83 counties. At least one (1) user for each Local Unit of Government will be identified by the Michigan Department of Treasury for system access.

1.3 Project Plan

1.301 PROJECT PLAN MANAGEMENT

1. The Contractor will carry out this project under the direction and control of the Contract Compliance Inspector.
2. Although there will be continuous liaison with the Contractor team, the Contract Compliance Inspector will meet monthly as a minimum, or as requested by the Contract Compliance Inspector, with the Contractor's project manager for the purpose of reviewing progress and providing necessary guidance to the Contractor in solving problems which arise.
3. The Contractor will submit brief written monthly summaries of progress which outline the work accomplished during the reporting period; work to be accomplished during the subsequent reporting period; problems, real or anticipated, which should be brought to the attention of the Contract Compliance Inspector; and notification of any significant deviation from previously agreed-upon work plans.
4. Project plan is in Article 1, Attachment C.
5. Within five (5) working days of the award of the Contract, the Contractor will submit to the Contract Compliance Inspector for final approval a work plan. This final implementation plan must be in agreement with Article 1, Attachment C as proposed by the Contractor and accepted by the State and include the following:
 - a. The Contractor's project organizational structure.
 - b. The Contractor's staffing table with names and title of personnel assigned to the project. This must be in agreement with staffing of accepted proposal. Necessary substitutions due to change of employment status and other unforeseen circumstances may only be made with prior approval of the State.
 - c. The project breakdown showing sub-projects, activities and tasks, and resources required and allocated to each.



A high-level project plan with estimated dates is provided in Article 1, Attachment C as directed. The project plan was developed based on the specified elements in the statement of work section of the Invitation to Bid. In addition to these parameters, Morley recommends consideration of the following process and reporting improvements:

1. We recommend periodic conference calls with the Contract Compliance Inspector to ensure that the process is on track, and to discuss issues and address concerns or questions.
2. Prior to each annual program, Morley would recommend that additional system testing be included for subsequent samples. This action would ensure smooth processing and accurate reporting for subsequent program years.
3. During the contract period, we recommend that periodic reviews of the process be conducted in order to improve the process. Morley would suggest innovative recommendations throughout the life of the project, utilizing the change request process identified in the Invitation to Bid.

A more detailed work plan will be produced once the Contract has been awarded.

1.302 REPORTS – RESERVED

1.4 Project Management

1.401 ISSUE MANAGEMENT

When issues arise internally or from Morley's external clients, the Project Manager is notified. The information collected by the Project Manager will include the description of the issue, the person facing the issue and if the issue is reproducible. The Project Manager will then create an issue ticket and submit it to the IT staff involved in the project. Once this ticket is received by the IT team, the issue is assessed and a time estimate is given to the Project Manager within eight hours to communicate to the person who uncovered the issue.

The IT staff will attempt to reproduce the problem and define the fix for the issue. Once the issue has been fixed, it is tested in Morley's staging environment and verified by the Project Manager that it has been resolved. Once the issue is resolved and tested in the staging environment, the fix is moved into the production servers according to our maintenance window.

Once in production, the IT staff and Project Manager will test the issue and verify that the issue has been resolved. The IT staff will close the ticket and the Project Manager will communicate the resolution to the person who uncovered the issue.

1.402 RISK MANAGEMENT

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

To manage risks associated with this project, Morley will follow these steps:

1. The Morley team will hold weekly operational and technical meetings during the entire development lifecycle.
2. The Morley Project Manager will analyze and prioritize all risks identified during these meetings.
3. The Morley team will identify and prioritize the risk mitigation options.
4. The Morley Project Manager will document the risk and mitigation options.
5. The Morley Project Manager will continuously monitor the targeted risk from identification to the resolution.



1.403 CHANGE MANAGEMENT

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

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

1.5 Acceptance

1.501 CRITERIA

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

1. Performance and Reliability Evaluation (PARE)

The Performance and Reliability Evaluation will consist of three phases as follows:

a. PHASE 1 – Specifications Compliance Review

The first phase shall be comprised of a compliance review of the specifications for the Internet application/system listed in the Contract. This review will ensure all items are in compliance with the required specifications for the Contract. In the event Treasury determines that any component or feature of the system does not comply with the mandatory specifications of the Contract, Treasury reserves the right to cancel the contract.

b. PHASE 2 – Acceptance Test

The Contract Compliance Inspector will evaluate the system's performance based on the data integrity, integration of all data, querying capability and reports produced. The Contract Compliance Inspector will determine that the system is fully operational when all of the requirements listed in the Contract are met. It will be the Contract Compliance Inspector's responsibility to determine that the system is fully operational.

c. PHASE 3 – Post Implementation

The performance period for Phase 3 is a period of forty-five (45) consecutive calendar days. The performance period shall commence when the first data load of all eighty three (83) counties is complete and the system is fully operational.

During the performance period for Phase 3 there shall be no more than three (3) interruptions. During the performance period for Phase 3 there shall be no individual interruption that lasts longer than four (4) hours.

An interruption is defined as failure in the Contractor-supplied system or application, which results in work stoppage.

Work stoppages resulting from network downtime, Treasury-supplied equipment failure or Treasury-supplied software malfunctions shall not be included in the performance period.

1.502 FINAL ACCEPTANCE

Final Acceptance will be completed forty-five (45) days after Phase 3 of the PARE in section 1.501. During Final Acceptance, there shall be no more than three (3) interruptions. During Final Acceptance there shall be no individual interruption that lasts longer than four (4) hours (see 1.501.1.c for definition of interruption). Upon completion of Final Acceptance, the Contract Compliance Inspector will provide written acceptance of the system.

**1.6 Compensation and Payment****1.601 COMPENSATION AND PAYMENT**

This is a firm, fixed price Contract. See Article 1, Attachment A for pricing.

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

1. System Development
 - a. 50% of the System Development cost will be paid upon completion of Phase 2 – Acceptance Test (see section 1.501.1.b)
 - b. 25% of the System Development cost will be paid upon completion of Phase 3 – Post Implementation (see section 1.501.1.c)
 - c. 25% of the System Development cost will be paid upon completion of Final Acceptance (see section 1.502).
2. Data Collection/Integration
 - a. 50% of the Data Collection/Integration cost will be paid upon completion of Phase 2 – Acceptance Test (see section 1.501.1.b)
 - b. 25% of the Data Collection/Integration cost will be paid upon completion of Phase 3 – Post Implementation (see section 1.501.1.c)
 - c. 25% of the Data Collection/Integration cost will be paid upon completion of Final Acceptance (see section 1.502).
3. System Maintenance will be prorated monthly based on the annual cost.
4. System Hosting will be prorated monthly based on the annual cost.

1.7 Additional Terms and Conditions Specific to this SOW - RESERVED



Article 1, Attachment A
Pricing

Please note that Morley has provided pricing in an alternate format on the following page to better display the components of each budget item.

Work and Deliverable	Year 1 Cost	Year 2 Cost	Year 3 Cost	3-Year Total
1. System Development	\$ _____	_____	_____	\$ _____
2. Data Collection/Integration	\$ _____	\$ _____	\$ _____	\$ _____
3. System Maintenance	\$ _____	\$ _____	\$ _____	\$ _____
4. System Hosting	\$ _____	\$ _____	\$ _____	\$ _____
			Grand Total:	\$ _____

Additional Resources and Costs Available from Bidder (i.e. hourly rates for system modifications)
1.
2.
3.
4.

- Pricing must be all inclusive



Line Item	Year 1	Year 2	Year 3	Total
System Development (one-time cost)	\$95,000.00	N/A	N/A	\$95,000.00
<ul style="list-style-type: none"> Hardware/Licensing: \$50,000 CASS Certified Software: \$10,000 Project Management: 120 labor hours x \$125 per hour = \$15,000 Web Design & Development: 160 labor hours x \$125 per hour = \$20,000 				
Data Collection/Integration	44,520.00	18,260.00	18,260.00	81,040.00
Year 1:				
<ul style="list-style-type: none"> One-Time Integration Setup; Secured FTP Setup & Testing: 64 hours x \$125 per hour = \$8,000 Processing/Verifying/Uploading County Data: Eight hours x 83 counties x \$55 per hour = \$36,520 				
Years 2 & 3:				
<ul style="list-style-type: none"> Processing/Verifying/Uploading County Data: Four hours x 83 counties x \$55 per hour = \$18,260 				
System Maintenance	165,100.00	184,100.00	184,100.00	533,300.00
<ul style="list-style-type: none"> Help Desk Customer Service Representative: 45 hours x 52 weeks x \$35 per hour = \$81,900 per year IT Technical Support (ad-hoc reporting, misc. support): 20 hours* x 52 weeks x \$55 per hour = \$57,200* per year Project Manager: 4 hours x 52 weeks x \$125/hour = \$26,000 per year Years 2 & 3 – System Maintenance (annual enhancements, new functionality): 20% x \$95,000 (initial system development) = \$19,000 				
System Hosting	12,000.00	12,000.00	12,000.00	36,000.00
Web Hosting, Backup & Recovery Support, DBA, URL Registration: \$1,000/month				
Total	\$316,620.00	\$214,360.00	\$214,360.00	\$745,340.00

* Morley anticipates ad hoc reporting to occur on a variable basis and has allotted 1,040 hours over the course of the year for these requests. Pricing is broken down as an average hourly allotment per week, though we acknowledge some weeks may have no reporting requests while others may have 40+ hours worth.



Article 1, Attachment C
Project Plan

ID	Task Name	Duration (business days)	Start*	Finish*	Predecessors	Resource Names
1	Project initiation	10 days?	4/21/2008	5/2/2008		
2	Program awarded	1 day?	4/21/2008	4/21/2008		State of MI
3	Establish joint project team	2 days	4/22/2008	4/23/2008	2	Project Mgr/State of MI
4	Establish project team meeting schedule	3 days?	4/23/2008	4/25/2008		Project Mgr/State of MI
5	Establish timelines for project launch and ongoing operations	5 days?	4/28/2008	5/2/2008	4	Project Mgr/State of MI
6						
7	Project launch	41 days?	4/21/2008	6/16/2008		
8	Contact 83 counties; establish timeline for setting up feed	15 days?	4/21/2008	5/9/2008		Project Mgr/State of MI
9	Establish feed load templates for each of the counties	14 days	5/12/2008	5/29/2008	8	Project Mgr
10	Run test feed load from five counties	2 days	5/30/2008	6/2/2008	9	IT Team, Project Mgr
11	Load feeds from 83 counties for 2008	10 days	6/3/2008	6/16/2008	10	IT Team
12						
13	Central database setup	18 days	4/21/2008	5/14/2008		
14	Design database	5 days	4/21/2008	4/25/2008		IT Team
15	Implement database	5 days	4/28/2008	5/2/2008	14	IT Team
16	Load configuration data	5 days	5/5/2008	5/9/2008	15	IT Team
17	Load test data	3 days	5/12/2008	5/14/2008	16	IT Team
18						
19	Web application setup	41 days	4/21/2008	6/16/2008		
20	Solidify requirements for online application	3 days	4/21/2008	4/23/2008		Project Mgr/State of MI
21	Code design	4 days	4/24/2008	4/29/2008		IT Team
22	Login module coding and unit testing	4 days	4/30/2008	5/5/2008	21	IT Team
23	Search module coding and unit testing	4 days	5/6/2008	5/9/2008	22	IT Team
24	Reports module coding and unit testing	4 days	5/12/2008	5/15/2008	23	IT Team
25	Audit trail module coding and unit testing	4 days	5/16/2008	5/21/2008	24	IT Team
26	Change-request module coding and unit testing	4 days	5/22/2008	5/27/2008	25	IT Team

TERMS AND CONDITIONS

CONTRACT NO. 071B8200228



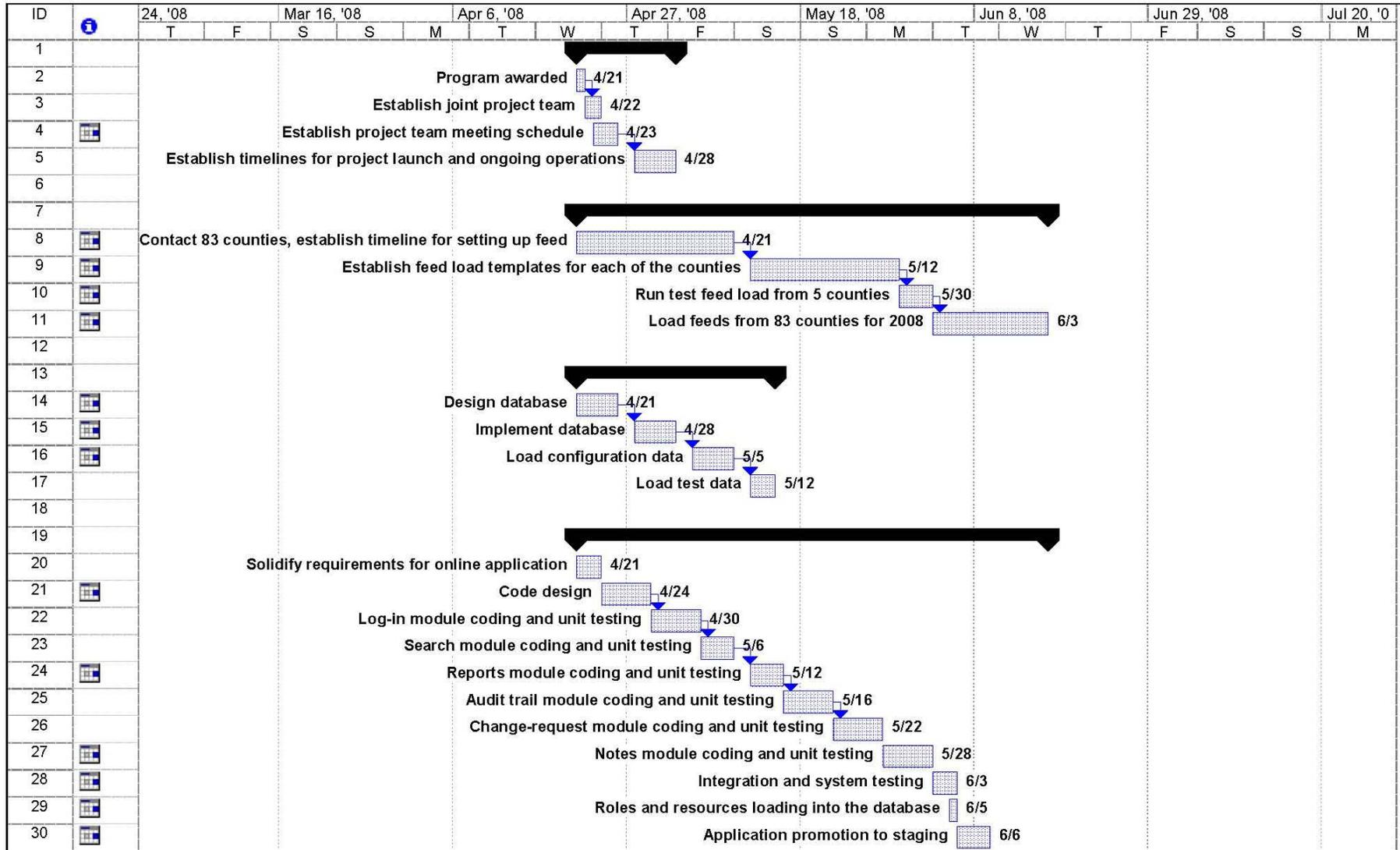
27	Notes module coding and unit testing	4 days	5/28/2008	6/2/2008		IT Team
28	Integration and system testing	3 days	6/3/2008	6/5/2008		IT Team
29	Roles and resources loading into the database	1 day	6/5/2008	6/5/2008		IT Team
30	Application promotion to staging	2 days	6/6/2008	6/9/2008		IT Team
31	Application testing on staging	2 days	6/9/2008	6/10/2008		IT Team
32	Application promotion to production	2 days	6/10/2008	6/11/2008		IT Team
33	Application testing on production	2 days	6/12/2008	6/13/2008		IT Team
34	Application "Go Live" date	1 day	6/16/2008	6/16/2008		IT Team
35						
36	Project launch (Year 2 and 3)	63 days	10/6/2008	12/31/2008		
37	Contact 83 counties and establish a timeline for setting up the feed	20 days	10/6/2008	10/31/2008		Project Mgr
38	Run test feed load from five counties	20 days	11/3/2008	11/28/2008		IT Team
39	Load feeds from 83 counties	23 days	12/1/2008	12/31/2008		IT Team
40	Archive data older than two years	23 days	12/1/2008	12/31/2008		IT Team
41						
42	Archival Program	28 days	8/1/2008	9/9/2008		
43	Design program	7 days	8/1/2008	8/11/2008		IT Team
44	Implement program and unit testing	14 days	8/12/2008	8/29/2008	43	IT Team
45	Integration testing	5 days	9/1/2008	9/5/2008	44	IT Team
46	Promotion to production	2 days	9/8/2008	9/9/2008	45	IT Team

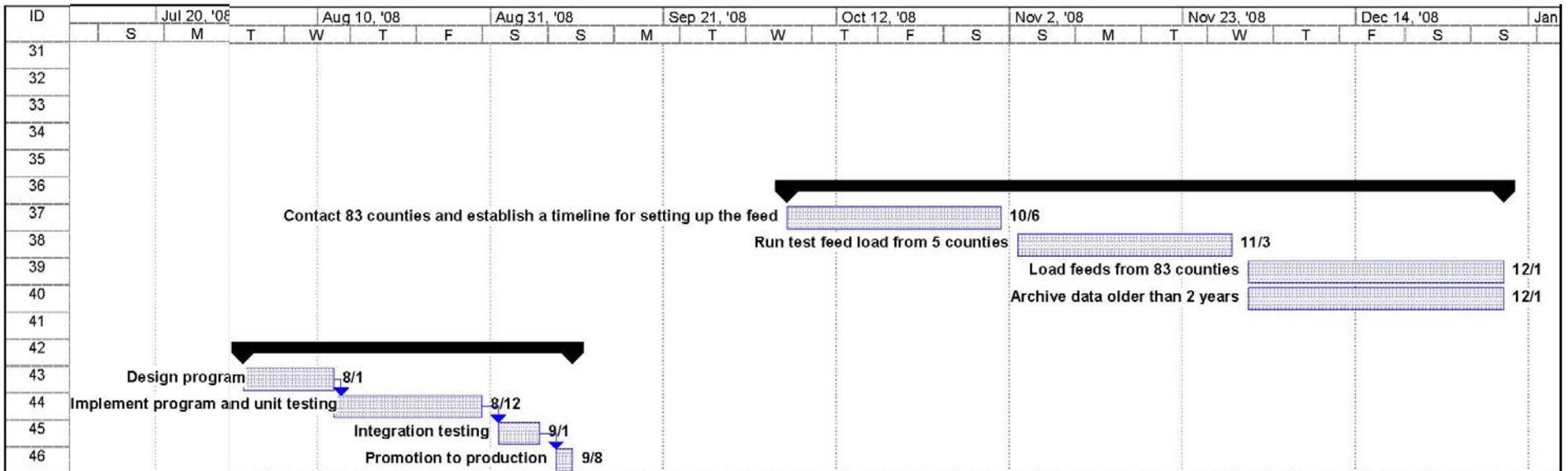
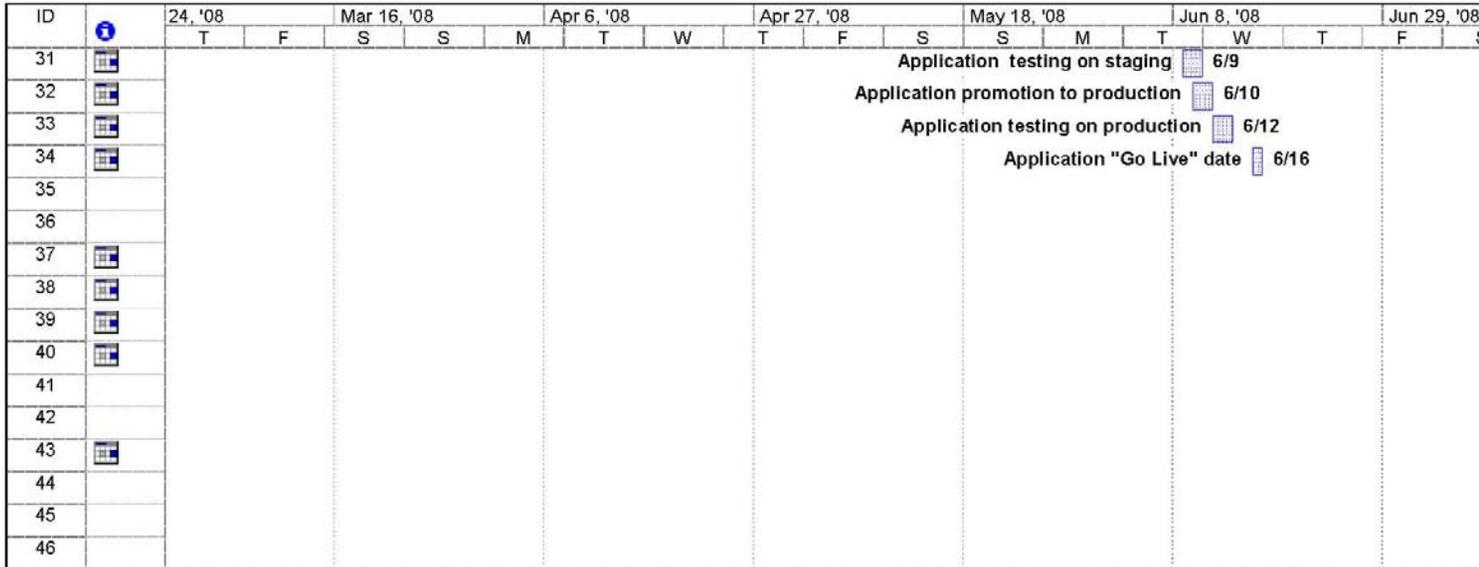
*Unless otherwise specified, start time is 8 a.m. and end time is 5 p.m. each day



Gantt Chart Key

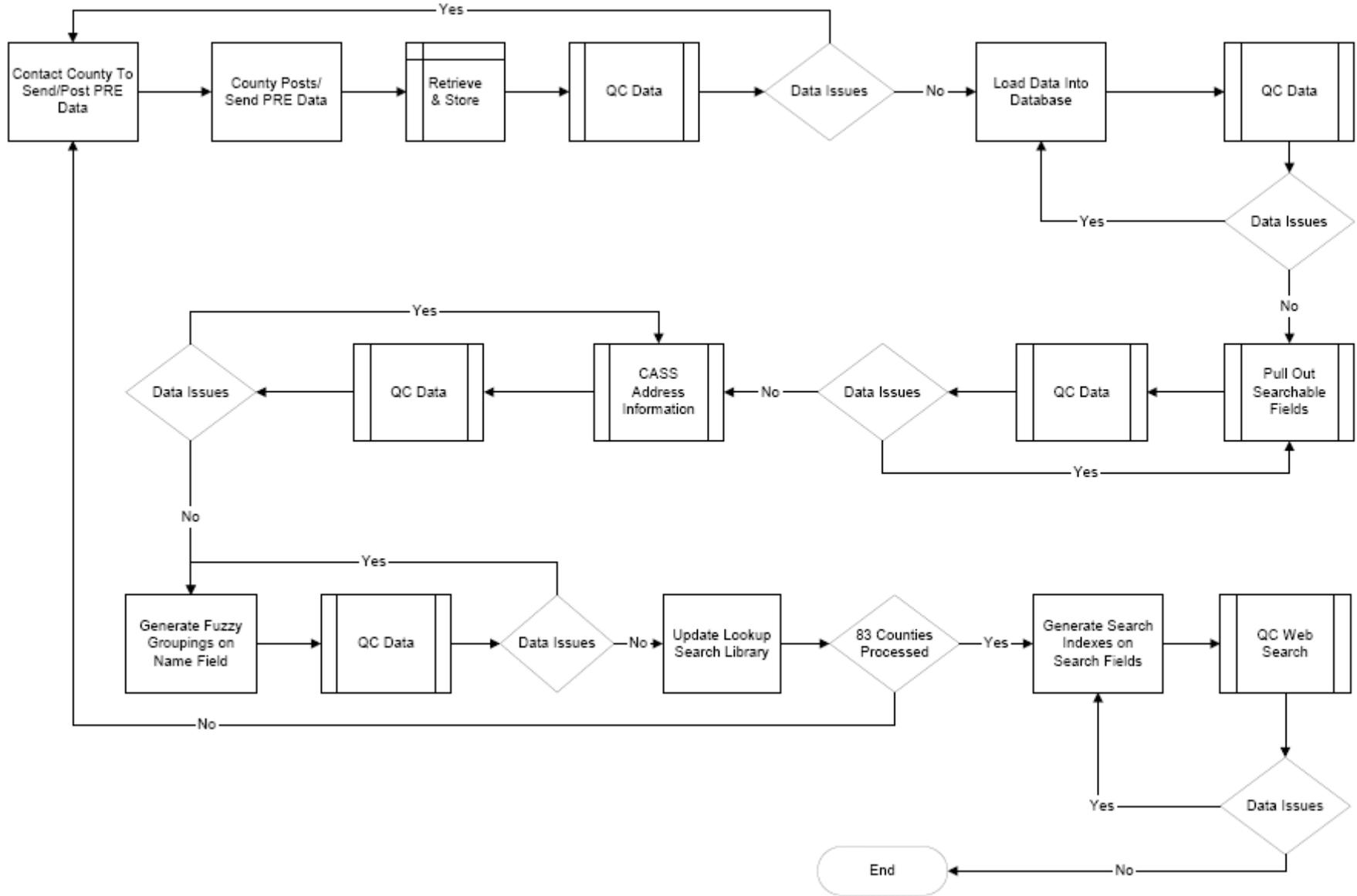
Task		Rolled Up Task		External Tasks	
Progress		Rolled Up Milestone		Project Summary	
Milestone		Rolled Up Progress		Group By Summary	
Summary		Split		Deadline	







Article 1, Attachment D
Proposed Process Flow Diagram





Article 2 – General Terms and Conditions

2.010 Contract Structure and Administration

2.011 Definitions

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

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

2.012 Attachments and Exhibits

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

2.013 Statements of Work

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



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

2.014 Issuing Office

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

Jim Wilson
Purchasing Operations
Department of Management and Budget
Mason Bldg, 2nd Floor
PO Box 30026
Lansing, MI 48909
Email: wilsonj4@michigan.gov
Phone: 517-241-1916

2.015 Contract Compliance Inspector

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

Patrick Huber
Department of Treasury
Bureau of Local Government Services
430 West Allegan
Lansing, MI 48922.

2.020 Contract Objectives/Scope/Background

2.021 Background

See section 1.002

2.022 Purpose

See section 1.001.

**2.023 Objectives and Scope**

See sections 1.101 and 1.104.

2.024 Interpretation

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

2.025 Form, Function and Utility

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

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

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

2.032 Contract Term

This Contract is for the period from July 15, 2008 through March 31, 2012. All outstanding Purchase Orders shall also expire upon the termination (cancellation for any of the reasons listed in 2.210) of the Contract, unless otherwise extended pursuant to the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

2.033 Renewal(s)

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

2.040 Contractor Personnel**2.041 Contractor Personnel**

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



(b) Key Personnel

(i) In discharging its obligations under this Contract, Contractor shall provide the named Key Personnel on the terms indicated. Article 1, Attachment B provides an organization chart showing the roles of certain Key Personnel, if any.

(ii) Key Personnel shall be dedicated as defined in Article 1, Attachment B to the Project for its duration in the applicable Statement of Work with respect to other individuals designated as Key Personnel for that Statement of Work.

(iii) The State will have the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the State of the proposed assignment, will introduce the individual to the appropriate State representatives, and will provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State will provide a written explanation including reasonable detail outlining the reasons for the rejection. Additionally, the State's request shall be based on legitimate, good-faith reasons. Proposed alternative for the individual denied, shall be fully qualified for the position.

(iv) Contractor shall not remove any Key Personnel from their assigned roles or the Contract without the prior written consent of the State. If the Contractor does remove Key Personnel without the prior written consent of the State, it shall be considered an unauthorized removal ("Unauthorized Removal"). It shall not be considered an Unauthorized Removal if Key Personnel must be replaced for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation or for cause termination of the Key Personnel's employment. It shall not be considered an Unauthorized Removal if Key Personnel must be replaced because of promotions or other job movements allowed by Contractor personnel policies or Collective Bargaining Agreement(s) as long as the State receives prior written notice before shadowing occurs and Contractor provides thirty (30) days of shadowing unless parties agree to a different time period. The Contractor with the State shall review any Key Personnel replacements, and appropriate transition planning will be established. Any Unauthorized Removal may be considered by the State to be a material breach of the Contract, in respect of which the State may elect to exercise its rights under Section 2.210.

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

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

If Contractor fails to assign a replacement to shadow the removed Key Personnel for at least thirty (30) days, in addition to the \$25,000.00 liquidated damages for an Unauthorized Removal, Contractor shall pay the amount of \$833.33 per day for each day of the thirty (30) day shadow period that the replacement Key

Personnel does not shadow the removed Key Personnel, up to \$25,000.00 maximum per individual. The total liquidated damages that may be assessed per Unauthorized Removal and failure to provide thirty (30) days of shadowing shall not exceed \$50,000.00 per individual.

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



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

(e) Staffing Levels.

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

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

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

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

2.042 Contractor Identification

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

2.043 Cooperation with Third Parties

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



2.044 Subcontracting by Contractor

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

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

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

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

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

2.045 Contractor Responsibility for Personnel

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

2.050 State Standards

2.051 Existing Technology Standards

The Contractor will adhere to all existing standards as described within the comprehensive listing of the State's existing technology standards at <http://www.michigan.gov/dit/0,1607,7-139-34305---,00.html>.

2.052 PM Methodology Standards

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



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

2.053 Adherence to Portal Technology Tools

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

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

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

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

2.054 Acceptable Use Policy

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

2.060 Deliverables

2.061 Ordering

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

2.062 Software

Exhibit C lists the items of software the State is required to purchase for execution the Contract. The list in **Exhibit C** includes all software required to complete the Contract and make the Deliverables operable; if any additional software is required in order for the Deliverables to meet the requirements of this Contract, such software shall be provided to the State by Contractor at no additional charge (except where agreed upon and specified in a Statement of Work or Contract Change Notice). **Exhibit C** also identifies certain items of software to be provided by the State.

2.063 Hardware

Exhibit B lists the items of hardware the State is required to purchase for execution the Contract. The list in **Exhibit B** includes all hardware required to complete the Contract and make the Deliverables operable; if any additional hardware is required in order for the Deliverables to meet the requirements of this Contract, such hardware shall be provided to the State by Contractor at no additional charge (except where agreed upon and specified in a Contract Change Notice). **Exhibit B** also identifies certain items of hardware to be provided by the State.



2.064 Equipment to be New and Prohibited Products

(a) Equipment to be New

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

(b) Prohibited Products

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

2.070 Performance

2.071 Performance, In General

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

2.072 Time of Performance

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

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

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

2.073 Liquidated Damages

The parties acknowledge that system down-time or untimely collection, integration and posting of tax roll data will interfere with the timely and proper completion of the Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any such delay. Therefore, Contractor and the State agree that in the case of any such system down-time or untimely collection, integration and posting of tax roll data in respect of which the State does not elect to exercise its rights under **Section 2.191**, the State may assess liquidated damages against Contractor as specified in this Section.

If system down-time or untimely collection, integration and posting of tax roll data occurs, then the State shall be entitled to collect liquidated damages as follow:

1. System Down-Time: In the amount of \$500.00 when the system is down four (4) hours or more on a single business day and an additional \$500.00 per day for each day Contractor fails to remedy system availability to at least 99% of each 24 hour period, beginning at 8:00 a.m. and ending at 5:00 p.m. per section 1.104.9.a.
2. Untimely Collection, Integration and Posting of Tax Roll Data: In the amount of \$500.00 and an additional \$500.00 per day for each day Contractor fails to remedy timely collection/integration of tax roll data per sections 1.104.1, 2 and 3.

**2.074 Bankruptcy**

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

To secure the State's progress payments before the delivery of any services or materials required for the execution of Contractor's obligations hereunder, and any work which Contractor may subcontract in the support of the performance of its obligations hereunder, title shall vest in the State to the extent the State has made progress payments hereunder.

2.075 Time is of the Essence

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

2.080 Delivery and Acceptance of Deliverables**2.081 Delivery Responsibilities**

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

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

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

2.082 Delivery of Deliverables

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



2.083 Testing

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

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

2.084 Approval of Deliverables, In General

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

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

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

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

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

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



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

2.085 Process For Approval of Written Deliverables

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

2.086 Process for Approval of Services

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

2.087 Process for Approval of Physical Deliverables

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

2.088 Final Acceptance

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



2.090 Financial

2.091 Pricing

(a) Fixed Prices for Services/Deliverables

Each Statement of Work/PO issued under this Contract shall specify (or indicate by reference to the appropriate Contract Exhibit) the firm, fixed prices for all Services/Deliverables, and the associated payment milestones and payment amounts. To the extent the parties agree that certain specific Services will be provided on a time and materials basis, such Services shall be provided at the rates in Article 1, Attachment A. The State may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.

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

If the scope of the Services/Deliverables under any Statement of Work issued under this Contract is subsequently reduced by the State, the parties shall negotiate an equitable reduction in Contractor's charges under such Statement of Work commensurate with the reduction in scope, using the rates in **Article 1, Attachment A** unless specifically identified in an applicable Statement of Work.

(c) Services/Deliverables Covered

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

(d) Labor Rates

All time and material charges will be at the rates specified in **Article 1, Attachment A**.

2.092 Invoicing and Payment Procedures and Terms

(a) Invoicing and Payment – In General

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

(ii) Each Contractor invoice will show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements. The charges for Services billed on a time and materials basis shall be determined based on the actual number of hours of Services performed, at the applicable Labor Rates specified in **Article 1, Attachment A**. Invoices for Services performed on a time and materials basis will show, for each individual, the number of hours of Services performed during the billing period, the billable skill/labor category for such person and the applicable hourly billing rate. (iii) Correct invoices will be due and payable by the State, provided the State determines that the invoice was properly rendered.

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

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

(c) Out-of-Pocket Expenses

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

(d) Pro-ration

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



(e) Antitrust Assignment

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

(f) Final Payment

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

2.093 State Funding Obligation

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

2.094 Holdback - Reserved

2.095 Electronic Payment Availability - Reserved

2.100 Contract Management

2.101 Contract Management Responsibility

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

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

2.102 Problem and Contract Management Procedures

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

2.103 Reports and Meetings

(a) Reports.

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

- (i) separately address Contractor's performance in each area of the Services;
- (ii) for each area of the Services, assess the degree to which Contractor has attained or failed to attain the pertinent objectives in that area, including on-time completion and delivery of Deliverables;
- (iii) explain the reasons for any failure to achieve on-time completion and delivery of Deliverables and include a plan for corrective action where appropriate;
- (iv) describe any circumstances that Contractor anticipates will impair or prevent on-time completion and delivery of Deliverables in upcoming reporting periods;



- (v) include plans for corrective action or risk mitigation where appropriate and describe the status of ongoing problem resolution efforts;
- (vi) provide reports setting forth a comparison of actual hours spent by Contractor (including its augmented personnel and Subcontractors) in performing the Project versus hours budgeted by Contractor.
- (vii) set forth a record of the material personnel changes that pertain to the Services and describe planned changes during the upcoming month that may affect the Services.
- (viii) include such documentation and other information may be mutually agreed to verify compliance with, and meeting the objectives of, this Contract.
- (ix) set forth an updated schedule that provides information on the status of upcoming Deliverables, expected dates of delivery (or redelivery) of such Deliverables and estimates on timing for completion of the Project.

(b) Meetings.

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

2.104 System Changes

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

2.105 Reserved

2.106 Change Requests

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

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

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

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



(a) Change Requests

(i) State Requests

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

(ii) Contractor Recommendations

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

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

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

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

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

2.107 Management Tools

Contractor will use an automated tool for planning, monitoring and tracking the Contract's progress. In addition, Contractor shall use automated project management tools as reasonably necessary to perform the Services, which tools shall include the capability to produce through the end of the Contract: (i) staffing tables with names of personnel assigned to Contract tasks, (ii) project plans showing tasks, subtasks, Deliverables and the resources required and allocated to each (including detailed plans for all Services to be performed within the next sixty (60) days, updated semi-monthly) and (iii) graphs showing critical events, dependencies and decision points during the course of the Contract. Any tool(s) used by Contractor for such purposes must produce information of a type and in a manner and format that will support reporting in compliance with the State's standard to the extent such information is described with reasonable detail in the Statements of Work and to the extent the related work is of sufficient project complexity and duration to warrant such reporting.

2.111 Records and Inspections

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



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

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

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

2.112 Errors

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

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

2.120 State Responsibilities

2.121 State Performance Obligations

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

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

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



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

2.130 Security

2.131 Background Checks

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

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

2.140 Reserved

2.150 Confidentiality

2.151 Freedom of Information

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

2.152 Confidentiality

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



2.153 Protection of Confidential Information

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

2.154 Exclusions

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

2.155 No Implied Rights

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

2.156 Remedies

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

2.157 Security Breach Notification

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



2.158 Survival

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

2.159 Destruction of Confidential Information

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

2.160 Proprietary Rights

2.161 License

Contractor grants to the State a non-exclusive, royalty-free, site-wide, irrevocable, transferable license to use the Software and related documentation according to the terms and conditions of this Contract. For the purposes of this license, "site-wide" includes any State of Michigan office regardless of its physical location.

The State may modify the Software and may combine such with other programs or materials to form a derivative work. The State will own and hold all copyright, trademark, patent and other intellectual property rights in any derivative work, excluding any rights or interest in Software other than those granted in this Contract.

The State may copy each item of Software to multiple hard drives or networks unless otherwise agreed by the parties.

The State will make and maintain no more than one archival copy of each item of Software, and each copy will contain all legends and notices and will be subject to the same conditions and restrictions as the original. The State may also make copies of the Software in the course of routine backups of hard drive(s) for the purpose of recovery of hard drive contents.

In the event that the Contractor shall, for any reason, cease to conduct business, or cease to support the Software, the State shall have the right to convert these licenses into perpetual licenses, with rights of quiet enjoyment, but subject to payment obligations not to exceed the then current rates.

2.162 Source Code Escrow – Reserved

2.163 Rights in Data

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

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

**2.164 Ownership of Materials**

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

2.165 Standard Software

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

2.166 Pre-existing Materials for Custom Software Deliverables

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

2.167 General Skills

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

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

The Contractor represents and warrants:

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

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

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

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



- (e) The contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into this Contract, on behalf of Contractor.
- (f) It is qualified and registered to transact business in all locations where required.
- (g) Neither the Contractor nor any Affiliates, nor any employee of either, has, shall have, or shall acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under this Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor shall notify the State within two (2) days of any such interest that may be incompatible with the interests of the State.
- (h) Neither Contractor nor any Affiliates, nor any employee of either has accepted or shall accept anything of value based on an understanding that the actions of the Contractor or Affiliates or employee on behalf of the State would be influenced. Contractor shall not attempt to influence any State employee by the direct or indirect offer of anything of value.
- (i) Neither Contractor nor any Affiliates, nor any employee of either has paid or agreed to pay any person, other than bona fide employees and consultants working solely for Contractor or such Affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.
- (j) The prices proposed by Contractor were arrived at independently, without consultation, communication, or agreement with any other bidder for the purpose of restricting competition; the prices quoted were not knowingly disclosed by Contractor to any other bidder; and no attempt was made by Contractor to induce any other person to submit or not submit a proposal for the purpose of restricting competition.
- (k) All financial statements, reports, and other information furnished by Contractor to the State as part of its response to the CONTRACT or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Contractor as of the respective dates, or for the respective periods, covered by such financial statements, reports, other information. Since the respective dates or periods covered by such financial statements, reports, or other information, there have been no material adverse change in the business, properties, financial condition, or results of operations of Contractor.
- (m) All written information furnished to the State by or behalf of Contractor in connection with this Contract, including its bid, is true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make such information not misleading.
- (n) It is not in material default or breach of any other contract or agreement that it may have with the State or any of its departments, commissions, boards, or agencies. Contractor further represents and warrants that it has not been a party to any contract with the State or any of its departments that was terminated by the State or such department within the previous five (5) years for the reason that Contractor failed to perform or otherwise breached an obligation of such contract.

2.172 Software Warranties

(a) Performance Warranty

The Contractor represents and warrants that Deliverables, after Final Acceptance, will perform and operate in compliance with the requirements and other standards of performance contained in this Contract (including all descriptions, specifications and drawings made a part of the Contract) for a period of ninety (90) days. In the event of a breach of this warranty, Contractor will promptly correct the affected Deliverable(s) at no charge to the State.

(b) No Surreptitious Code Warranty

The Contractor represents and warrants that no copy of licensed Software provided to the State contains or will contain any Self-Help Code or any Unauthorized Code as defined below. This warranty is referred to in this Contract as the "No Surreptitious Code Warranty."



As used in this Contract, "Self-Help Code" means any back door, time bomb, drop dead device, or other software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than the licensee of the software. Self-Help Code does not include Software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee's computer system(s) (e.g. remote access via modem) for purposes of maintenance or technical support.

As used in this Contract, "Unauthorized Code" means any virus, Trojan horse, spyware, worm or other Software routines or components designed to permit unauthorized access to disable, erase, or otherwise harm software, equipment, or data; or to perform any other such actions. The term Unauthorized Code does not include Self-Help Code. Unauthorized Code does not include Software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee's computer system(s) (e.g. remote access via modem) for purposes of maintenance or technical support.

In addition, Contractor will use up-to-date commercial virus detection software to detect and remove any viruses from any software prior to delivering it to the State.

(c) Calendar Warranty

The Contractor represents and warrants that all software for which the Contractor either sells or licenses to the State of Michigan and used by the State prior to, during or after the calendar year 2000, includes or shall include, at no added cost to the State, design and performance so the State shall not experience software abnormality and/or the generation of incorrect results from the software, due to date oriented processing, in the operation of the business of the State of Michigan.

The software design, to insure calendar year rollover compatibility, shall include, but is not limited to: data structures (databases, data files, etc.) that provide 4-digit date century; stored data that contain date century recognition, including, but not limited to, data stored in databases and hardware device internal system dates; calculations and program logic (e.g., sort algorithms, calendar generation, event recognition, and all processing actions that use or produce date values) that accommodates same century and multi-century formulas and date values; interfaces that supply data to and receive data from other systems or organizations that prevent non-compliant dates and data from entering any State system; user interfaces (i.e., screens, reports, etc.) that accurately show 4 digit years; and assurance that the year 2000 shall be correctly treated as a leap year within all calculation and calendar logic.

(d) Third-party Software Warranty

The Contractor represents and warrants that it will disclose the use or incorporation of any third-party software into the Deliverables. At the time of Delivery, the Contractor shall provide in writing the name and use of any Third-party Software, including information regarding the Contractor's authorization to include and utilize such software. The notice shall include a copy of any ownership agreement or license that authorizes the Contractor to use the Third-party Software.

2.173 Equipment Warranty

To the extent Contractor is responsible under this Contract for maintaining equipment/system(s), Contractor represents and warrants that it will maintain such equipment/system(s) in good operating condition and will undertake all repairs and preventive maintenance in accordance with the applicable manufacturer's recommendations for the period specified in this Contract.

The Contractor represents and warrants that the equipment/system(s) shall be in good operating condition and shall operate and perform to the requirements and other standards of performance contained in this Contract, when installed, at the time of Final Acceptance by the State, and for a period of one (1) year commencing upon the first day following Final Acceptance.

Within one business day of notification from the State, the Contractor shall adjust, repair or replace all equipment that is defective or not performing in compliance with the Contract. The Contractor shall assume all costs for replacing parts or units and their installation including transportation and delivery fees, if any.

The Contractor shall provide a toll-free telephone number to allow the State to report equipment failures and problems to be remedied by the Contractor.



The Contractor agrees that all warranty service it provides under this Contract shall be performed by original equipment manufacturer (OEM) trained, certified and authorized technicians.

The Contractor shall act as the sole point of contact for warranty service. The Contractor warrants that it shall pass through to the State any and all warranties obtained or available from the original equipment manufacturer, including any replacement, upgraded, or additional equipment warranties.

2.174 Physical Media Warranty

(a) Contractor represents and warrants that each licensed copy of the Software provided by the Contractor is free from physical defects in the media that tangibly embodies the copy. This warranty does not apply to defects discovered more than thirty (30) days after that date of Final Acceptance of the Software by the State. This warranty does not apply to defects arising from acts of Excusable Failure. If the Contractor breaches this warranty, then the State shall be entitled to replacement of the non-compliant copy by Contractor, at Contractor's expense (including shipping and handling).

2.175 DISCLAIMER

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

2.175 Standard Warranties

(a) Warranty of Merchantability

Deliverables shall be merchantable. All Deliverables shall be of good quality within the description given by the State, shall be fit for their ordinary purpose, shall be adequately contained and packaged within the description given by the State, shall conform to the agreed upon specifications, and shall conform to the affirmations of fact made by the Contractor on the container or label.

(b) Warranty of fitness for a particular purpose

When Contractor has reason to know or knows any particular purpose for which the Deliverables are required, and when the State is relying on the Contractor's skill or judgment to select or furnish suitable Deliverables, the Contractor warrants that the Deliverables are fit for such purpose.

(c) Warranty of title

Contractor shall convey good title in those Deliverables, whose transfer is right and lawful. All Deliverables provided by Contractor shall be delivered free from any security interest, lien, or encumbrance. Deliverables shall be delivered free of any rightful claim of any third person of ownership, interest, lien or encumbrance.

2.176 Consequences For Breach

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

2.180 Insurance



2.181 Liability Insurance

(a) Liability Insurance

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

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

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

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

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

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

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

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

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

1. Commercial General Liability with the following minimum coverage:

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

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

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



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

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

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

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

4. Employers liability insurance with the following minimum limits:

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

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

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

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

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

(b) Subcontractors

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

(c) Certificates of Insurance and Other Requirements

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



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

2.190 Indemnification

2.191 Indemnification

(a) General Indemnification

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

(b) Code Indemnification

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

(c) Employee Indemnification

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

(d) Patent/Copyright Infringement Indemnification

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

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

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



2.192 Continuation of Indemnification Obligations

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

2.193 Indemnification Procedures

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

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

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

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

2.200 Limits of Liability and Excusable Failure

2.201 Limits of Liability

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

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



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

2.202 Excusable Failure

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

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

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

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

2.203 Disaster Recovery

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

2.210 Termination/Cancellation by the State

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



2.211 Termination for Cause

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

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

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

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

2.212 Termination for Convenience

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

2.213 Non-Appropriation

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

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



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

2.214 Criminal Conviction

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

2.215 Approvals Rescinded

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

2.216 Rights and Obligations Upon Termination

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

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

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

2.217 Reservation of Rights

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



2.218 Contractor Transition Responsibilities

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

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

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

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

(e) Payment - If the transition results from a termination for any reason, reimbursement shall be governed by the termination provisions of this Contract. If the transition results from expiration, the Contractor will be reimbursed for all reasonable transition costs (i.e. costs incurred within the agreed period after contract expiration that result from transition operations) at the rates specified by **Article 1, Attachment A**. The Contractor will prepare an accurate accounting from which the State and Contractor may reconcile all outstanding accounts.

2.219 State Transition Responsibilities

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

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

2.220 Termination by Contractor

2.221 Termination by Contractor

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

2.230 Stop Work



2.231 Stop Work Orders

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

2.232 Cancellation or Expiration of Stop Work Order

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

2.233 Allowance of Contractor Costs

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

2.240 Reserved

2.250 Dispute Resolution

2.251 In General

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

2.252 Informal Dispute Resolution

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

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



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

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

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

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

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

2.253 Injunctive Relief

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

2.254 Continued Performance

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

2.260 Federal and State Contract Requirements

2.261 Nondiscrimination

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

2.262 Unfair Labor Practices

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



2.263 Workplace Safety and Discriminatory Harassment

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

2.270 Litigation

2.271 Disclosure of Litigation

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

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

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

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

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

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

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

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

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

2.272 Governing Law

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



2.273 Compliance with Laws

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

2.274 Jurisdiction

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

2.280 Environmental Provision

2.281 Environmental Provision

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

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

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

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

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



2.290 General

2.291 Amendments

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

2.292 Assignment

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

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

2.293 Entire Contract; Order of Precedence

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

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

2.294 Headings

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

2.295 Relationship of the Parties (Independent Contractor Relationship)

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

2.296 Notices

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



State:

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

Contractor(s):

Christopher J. Furlo
Morley Companies, Inc.
One Morley Plaza
Saginaw, MI 48603

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

(b) Binding Commitments

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

2.297 Media Releases and Contract Distribution

(a) Media Releases

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

(b) Contract Distribution

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

2.298 Reformation and Severability

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

2.299 Consents and Approvals

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

2.300 No Waiver of Default

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

2.301 Survival

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



2.302 Covenant of Good Faith

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

2.303 Permits

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

2.304 Website Incorporation

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

2.305 Taxes

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

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

2.306 Prevailing Wage

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

The Contractor, its subcontractors, their subcontractors, and all persons involved with the performance of this contract in privity of contract with the Contractor shall keep posted on the work site, in a conspicuous place, a copy of all wage rates and fringe benefits as prescribed in the contract. You must also post, in a conspicuous place, the address and telephone number of the Michigan Department of Labor and Economic Development, the office responsible for enforcement of the wage rates and fringe benefits. You shall keep an accurate record showing the name and occupation of the actual wage and benefits paid to each individual employed in connection with this contract. This record shall be available to the State upon request for reasonable inspection.

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

2.307 Call Center Disclosure

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

**2.308 Future Bidding Preclusion**

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

2.310 Reserved**2.320 Extended Purchasing – Reserved****2.330 Federal Grant Requirements - Reserved****2.331 RESERVED**



Exhibit A
Safeguard Requirements of Confidential Data
(See Section 1.701)

REVISED

7-15-04

SAFEGUARD REQUIREMENTS OF CONFIDENTIAL DATA

This section sets forth the safeguard requirements for handling, storage, and processing of confidential tax information for a Contractor and their subcontractor(s) and is incorporated as an integral part of the Contract. It will facilitate administration and enforcement of the laws of the State of Michigan applicable to the State of Michigan and in a manner consistent with the applicable statutes, regulations, published rules and procedures or written communication.

I. Authority

Authority for the Michigan Department of Treasury to require that this section be included in the Contract is contained in 1941 PA 122, as amended, MCL 205.28(1)(f), which states in part that subject to the same restrictions and penalties imposed upon department employees on the treatment of confidential information, a private contractor or its employees are strictly prohibited from disclosing taxpayer information to a third party. The prohibition against disclosure does not bar an employee of a private contractor with whom the State of Michigan (State) contracts that processes tax returns or payments pursuant to the Contract from having access to confidential information that is reasonably required for the processing or collection of amounts due this State.

II. Confidentiality

It is agreed that all information exchanged under this section will be kept confidential in accordance with the confidentiality provisions contained within section MCL 205.28(1)(f) and MCL 205.28(2) of the Michigan Department of Treasury Revenue Act, which state in part:

“Except as otherwise provided in this subdivision, an employee, authorized representative, or former employee or authorized representative of the department or anyone connected with the department will not divulge any facts or information obtained in connection with the administration of a tax or information or parameters that would enable a person to ascertain the audit selection or processing criteria of the department for a tax administered by the department.”

“A person who violates subsection (1)(e), (1)(f), or (4) is guilty of a felony, punishable by a fine of not more than \$5,000.00, or imprisonment for not more than 5 years, or both, together with the costs of prosecution. In addition, if the offense is committed by an employee of this state, the person will be dismissed from office or discharged from employment upon conviction.”

All information obtained by either Treasury or Contractor will not be disclosed except as necessary for the proper administration of and execution of the Contract. In the event, confidentiality statutes are amended, the State will notify Contractor of any changes.

No employee, agent, authorized representative or legal representative of Contractor will disclose any information obtained by virtue of this section to any other division within their company or any other governmental agency, department or unit within such governmental agency, to any other state or nation, or unauthorized third party. No tax returns or tax return information provided to Contractor will be duplicated or disseminated within or outside the



company without the written approval of the Contract Administrator. Michigan's tax returns and tax return information remain the property of the Department of Treasury.

Contractor may use a taxpayer's name, address and Social Security number or employer identification number to the extent necessary in connection with the processing and mailing of forms for any report or return required in the administration of any tax in the performance of the Contract.

Information received by the Michigan Department of Treasury from the U.S. Internal Revenue Service, pursuant to section 6103(d) of the Internal Revenue Code or any other U.S. federal Agency will only be subject to the exchange if received as part of the State of Michigan tax return filing requirements.

III. Procedure for Security

At a minimum, Contractor will safeguard any tax return information obtained under the Contract as follows:

- A. Access to the tax returns and tax return information will be allowed only to those authorized employees and Officials of Contractor who need the information to perform their official duties in connection with the uses of the information authorized in the Contract. The Contractor will be responsible for ensuring that each employee authorized to access Michigan tax information has signed the *Vendor, Contractor or Subcontractor Confidentiality Agreement* (Form 3337, see Attachment A) and provide a copy to the Department of Treasury, Disclosure Officer and Contract Administrator.
- B. Any records created from tax returns and tax return information will be stored in an area that is physically safe from access by unauthorized persons during duty hours as well as non-duty hours or when not in use.
- C. All personnel who will have access to the tax returns and to any records created by the tax return information will be advised of the confidential nature of the information, the safeguards required to protect the information and the civil and criminal sanctions for noncompliance contained in MCL 205.28(1)(f) and (2).
- D. All confidential information, which includes, but is not limited to, data stored electronically and any related output and paper documents will be secured from unauthorized access and with access limited to designated personnel only. Michigan tax return information will not be commingled with other information. Further, when appropriate, Michigan tax return information will be marked as follows:

CONFIDENTIAL-MICHIGAN TAX RETURN INFORMATION

Protect at all times. Do not disclose.

**MI tax information is exempt from disclosure
under the Freedom of Information Act.**

- E. The records will be transported under appropriate safeguards as defined in the Contract.



- F. The Department of Treasury, Disclosure Officer or Contract Administrator may make onsite inspections or make other provisions to ensure that adequate safeguards are being maintained by the Contractor.
- G. The Michigan Department of Treasury, Disclosure Officer, may monitor compliance of systems security requirements during the lifetime of the Contract.
- H. Contractor will also adopt policies and procedures to ensure that information contained in their respective records and obtained from Treasury and taxpayers will be used solely as provided in the Contract.

IV. Computer System Security of Tax Data

The identification of confidential tax records and defining security controls are intended to protect Treasury tax return information from unlawful disclosure, modification, destruction of information and unauthorized secondary uses.

Computer system security and physical security of tax data stored and processed by Contractor must be in compliance with the following security guidelines and standards established by the Michigan Department of Treasury as follows (these guidelines apply to any computer system developed by Contractor, either through its own systems staff, or through a contractor, subcontractor or vendor):

A. Controlled Access Protection –Common Criteria (C2)

All computer systems processing, storing and transmitting Michigan tax information must have computer access protection controls – (C2). These security standards are delineated in the “Common Criteria for Information Technology Security Evaluation” (CCITSE) at http://www.radium.ncsc.mil/tpep/library/ccitse/cc_over.html. To meet these standards, the operating security features of the system must have the following minimum requirements: a security policy, accountability, assurance, and documentation.

- 1) **Security Policy** – A security policy is a written document describing the system in terms of categories of data processed, users allowed access and access rules between the users and the data. Additionally, it describes procedures to prevent unauthorized access by clearing all protected information on objects before they are allocated or reallocated out of or into the system. Further protection must be provided where the computer system contains information for more than one program/project, office, or Agency and that personnel do not have authorization to see all information on the system.
- 2) **Accountability** – Computer systems processing Michigan tax information must be secured from unauthorized access. All security features must be available (audit trails, identification and authentication) and activated to prevent unauthorized users from indiscriminately accessing Michigan tax information. Everyone who accesses computer systems containing Michigan tax information is accountable. Access controls must be maintained to ensure that unauthorized access does not go undetected. Computer programmers and contractors who have a need to access databases, and are authorized under the law, must be held accountable for the work performed on the system. The use



of passwords and access control measures must be in place to identify who accessed protected information and limit that access to persons with a need to know.

a) On-line Access –Users will be limited to any Treasury on-line functions, by limiting access through functional processing controls and organization restrictions.

Any employee granted access privileges through the Contractor's Security Administrator will be approved for access and viewing rights to Treasury on-line systems by the Department of Treasury Disclosure Officer. The on-line access will be provided by Treasury's Office of Security.

b) Operating Features of System Security

Contractor must meet the following levels of protection with respect to tax return information. Individual user accountability must be ensured through user identification number and password.

- i. Access rights to confidential tax information must be secured through appropriate levels of authorization.
- ii. An audit trail must be maintained of accesses made to confidential information.
- iii. All confidential and protected information must be cleared from a system before it is used for other purposes not related to the enforcement, collection or exchange of data not covered by this section or by an addendum to this Contract.
- iv. Hard copies made of confidential tax return information must be labeled as confidential information.
- v. Confidential Treasury tax information will be blocked or coded as confidential on system.
- vi. Any computer system in which Michigan tax return information resides must systematically notify all users upon log-in of the following disclosure penalties for improperly accessing or making an authorized disclosure of Michigan tax return information:

NOTICE TO STATE AGENCY EMPLOYEES AND AUTHORIZED REPRESENTATIVES

This system contains Michigan Department of Treasury tax return information. DO NOT DISCLOSE OR DISCUSS MICHIGAN RELATED TAX RETURN INFORMATION with unauthorized individuals. The Michigan Department of Treasury Revenue Act, MCL 205.28(10)(f)(1), (2), prohibits such disclosure. A person making a willful unauthorized disclosure or inspection (browsing) of tax return information may be charged with the following Michigan penalties:

**MICHIGAN PENALTIES**

The Michigan Revenue Act imposes criminal penalties up to \$5,000 and/or imprisonment for 5 years, plus costs and dismissal from employment if it is found that an employee has made an unauthorized disclosure of a tax return or tax return information or divulged audit selection or processing parameters.

This statement is subject to modification. A confidentiality statement, subject to modification, as needed, will be sent annually by the Security Administrator to all employees, contractors, and legal representatives of Contractor.

- 3) **Assurance** – Contractor must ensure that all access controls and other security features are implemented and are working when installed on their computer system. Significant enhancements or other changes to a security system must follow the process of review, independent testing, and installation assurance. The security system must be tested at least annually to assure it is functioning correctly. All anomalies must be corrected immediately.
- a) The Contractor must initiate corrective action for all non-conformities as soon as detected and immediately advise the Contract Administrator. Notice of the corrective action must be provided to the Contract Administrator. All non-conformities must be reported to the Contract Administrator with the following:
 - a. Duration of non-conformity/interruption
 - b. Reason for non-conformity/interruption
 - c. Resolution.
 - b) All non-conformities to the specifications/tasks of the Contract must be corrected within four (4) hours. The State recognizes there will be instances when adherence to this time frame will not be possible. However, the State will only tolerate this on an exception basis. To request an exception to this time frame, the Contractor must submit a detailed project plan to address the non-conformity within four (4) hours to the Contract Administrator for approval.
- 4) **Documentation** – Design and test documentation must be readily available to the state. The developer or manufacturer should initially explain the security mechanisms, how they are implemented and their adequacy (limitations). This information should be passed on to the security officer or supervisor. Test documentation should describe how and what mechanisms were tested and the results. If recognized organizations/tests/standards are used, then a document to that effect will suffice. For example, a system that has been tested and certified as meeting certain criteria may have a document stating this fact, without detailed tests/results of information. Contractor, however, must ensure the documentation covers the exact system and that it includes the specific computer system used by Contractor.

Additionally, documentation must include a security administrator's guide. The security administrator's guide is addressed to the System's Administrator and Security Officer and will describe the protection mechanisms provided by the security system, guidelines



on their use and how they interact. This document will present cautions about security functions and describe privileges that should be controlled when running a secure system. The document will be secured and locked at all times with access rights only by the Systems Administrator and Security Officer.

Note: When a security system is designed or purchased for a specific computer or computer system, the security mechanisms must be reviewed by the State to ensure that needed security parameters are met. An independent test should be implemented on the specific computer or computer system to ensure that the security system meets the security parameters within this contract and developed with the computer system. The test may be arranged by the developer but must be done by an independent organization. Contractor must assign responsible individuals (Security Officers) with knowledge of information technology and applications to oversee the testing process. These individuals must be familiar with technical controls used to protect the system from unauthorized entry.

Finally, contingency and backup plans must be in place to ensure protection of Michigan tax information.

V. Electronic Transmission of Michigan Tax Information

The two acceptable methods of transmitting Michigan tax information over telecommunications devices are encryption and the use of guided media. Encryption involves the altering of data objects in a way that the objects become unreadable until deciphered. Guided media involves the use of protected microwave transmitting or the use of end to end fiber optics.

The Department of Information Technology (DIT) has defined encryption standards in DIT Standard 1410.17 section 6.5 which must be used to provide guidance for encryption, message authentication codes or digital signatures and digital signatures with associated certification infrastructure.

Unencrypted cable circuits of fiber optics is an alternative for transmitting Michigan tax information. Adequate measures must be taken to ensure that circuits are maintained on cable and not converted to unencrypted radio transmission. Additional precautions will be taken to protect the cable, i.e., burying the cable underground or in walls or floors and providing access controls to cable vaults, rooms and switching centers.

A. Remote Access

Accessing databases containing Michigan tax information from a remote location – that is, a location not directly connected to the Local Area Network (LAN) will require adequate safeguards to prevent unauthorized entry.

For dial up access, the system must require an identification security card that requires both PIN and card in possession. According to DIT- Procedure 1410.17 (4.1), dial in access into any connected state network will only be permitted after a dial-in user has been authenticated. Authentication is provided through ID and password.

**B. Portable Computer Devices**

Any entrusted confidential information collected or accessed during this Contract must be encrypted when stored on all storage devices and media. This includes, but not limited to, disk drives for servers and workstations, and portable memory media (PDAs, RAM drives, memory sticks, etc.).

VI. Record Keeping Requirements for Information Received in a Paper Format

Each Contractor employee or contractor requesting and receiving information will keep an accurate accounting of the information received. The audit trail will be required which will include the following information:

- a. Taxpayer's name
- b. Identification number
- c. Information requested
- d. Purpose of disclosure request
- e. Date information received
- f. Name of Agency/Division and employee making request
- g. Name of other employees who may have had access
- h. Date destroyed
- i. Method of destruction

A. Electronic Media

Contractor will keep an inventory of magnetic and electronic media received under the Contract.

Contractor must ensure that the removal of tapes and disks and paper documents containing Michigan tax return information from any storage area is properly recorded on charge-out records. Contractor is accountable for missing tapes, disks, and paper documents.

B. Recordkeeping Requirements of Disclosure Made to State or Federal Auditor General

When disclosures are made by Contractor to State or Federal Auditors, these requirements pertain only in instances where the Auditor General's staff extracts Michigan tax returns or tax information for further review and inclusion in their work papers. Contractor must identify the hard copies of tax records or if the tax information is provided by magnetic tape format or through other electronic means, the identification will contain the approximate number of taxpayers records, the date of inspection, the best possible description of the records and the name of the Auditor(s) making the inspection.

The Disclosure Officer must be notified, in writing, of any audits done by auditors, internal or otherwise, of Contractor that would involve review of Treasury processing parameters.

VII. Contract Services

The following language will be included in any contract entered into by Contractor with a subcontractor if the subcontractor will process Michigan tax return information provided under this Safeguard Provision.



- A. The identification of confidential tax records and defining security controls are intended to protect Treasury tax return information from unlawful disclosure, modification, destruction of information and unauthorized secondary uses.
- B. Definition of Treasury Tax Return Information
Treasury tax return information is defined in RAB 1989-39 as follows:
- Taxpayer's identity, address, the source or amount of his/her income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, over assessments, or tax payments whether the taxpayer's return was, is being or will be examined or subject to their investigation or processing, or any other data, received by, recorded by, prepared by, furnished to or collected by the agency with respect to a return or with respect to the determination of the existence, or liability (or the amount thereof) of any person under the tax laws administered by the Department, or related statutes of the state for any tax, penalty, interest, fine, forfeiture, or other imposition or offense. The term "tax return information" also includes any and all account numbers assigned for identification purposes.
- C. An acknowledgment that a taxpayer has filed a return is known as a "fact of filing" and may not be disclosed. All tax return data made available in any format will be used only for the purpose of carrying out the provisions of the Contract between Contractor and the subcontractor. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of the Contract between Contractor and the subcontractor. In addition, all related output will be given the same level of protection as required for the source material.
- D. The subcontractor will certify that the data processed during the performance of the Contract between Contractor and the subcontractor will be completely purged from all data storage components of the subcontractor's computer facility, and no output will be retained by the subcontractor at the time the work is completed. If immediate purging of all data storage components is not possible, the subcontractor will certify that any Michigan data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
- E. Destruction of tax data, including any spoilage or any intermediate hard copy printout which may result during the processing of Michigan tax return information, will be documented with a statement containing the date of destruction, description of material destroyed, and the method used.
- F. Computer system security and physical security of tax data stored and processed by the subcontractor must be in compliance with security guidelines and standards established by this contract. See section VI (Record Keeping Requirements for Information Received in Paper Format) for more details.
- G. The Contractor will be responsible for ensuring that each employee authorized to access Michigan tax information has signed the *Vendor, Contractor or Subcontractor Confidentiality Agreement* (Form 3337, see Attachment A) and provide a copy to the Department of Treasury, Disclosure Officer and Contract Administrator.



H. No work involving information furnished under the contract between Contractor and a subcontractor will be further subcontracted without the specific approval of the Michigan Department of Management and Budget. Contractor and approved subcontractors handling Michigan tax return information will be required to sign the *Vendor, Contractor or Subcontractor Confidentiality Agreement* provided by Treasury, (Form 3337, see Attachment A). The original agreements will be returned to the Disclosure Officer for the Department of Treasury and a copy sent to the Contract Administrator.

VIII. Transport of Tax Information

In the event, it is necessary to transport confidential tax return information the Contractor is responsible for holding the carrier responsible for safeguarding the records. The Contractor must obtain a signed *Vendor, Contractor or Subcontractor Confidentiality Agreement* (Form 3337, see Attachment A) for each carrier employee who has access to Michigan tax return information. The original agreements will be returned to the Department of Treasury, Disclosure Officer and a copy sent to the Contract Administrator.

If it is necessary to transfer records and responsibility for transport to a third carrier due to a mishap during transportation, the Contractor is responsible for ensuring safeguard standards remain enforce.

Any such incidents must be reported to the Contract Administrator immediately.

IX. Disposal of Tax Information

Materials furnished to Contractor, such as tax returns, remittance vouchers, W-2 reports, correspondence, computer printouts, carbon paper, notes, memorandums and work papers will be destroyed by burning, mulching, pulverizing or shredding. If shredded, strips should not be more than 5/16-inch, microfilm should be shredded to effect a 1/35-inch by 3/8-inch strip, and pulping should reduce material to particles of one inch or smaller.

Disk media must be destroyed by overwriting all data tracks a minimum of three times or running a magnetic strip over and under entire area of disk at least three (3) times. If the CD or DVD cannot be overwritten it must be destroyed in an obvious manner to prevent use in any disk drive unit and discarded. Hand tearing, recycling, or burying information in a landfill are unacceptable methods of disposal. Electronic data residing on any computer systems must be purged based on Treasury's retention schedule.

Contractor and its subcontractor(s) will retain all confidential tax information received by Treasury only for the period of time required for any processing relating to the official duties and then will destroy the records. Any confidential tax information that must be kept to meet evidentiary requirements must be kept in a secured, locked area and properly labeled as confidential return information. See Procedure for Security (Section V of this section) for more details.

X. Security Responsibility



Contractor will designate a security person who will ensure that each individual having access to confidential tax information or to any system which processes Michigan tax return information is appropriately screened, trained and executes a *Vendor, Contractor or Subcontractor Confidentiality Agreement* (Form 3337, see Attachment A) before gaining access or transaction rights to any process and computer system containing Treasury tax return information.

Each Contractor or their subcontractor(s) employees' access and transaction rights will be reviewed periodically to ensure that there is a need to know Treasury tax return information displayed in any media.

Michigan tax return information will be made available only to individuals authorized by the Contract. State and Contractor will maintain a list of persons authorized to request and receive information and will update the list as necessary. A copy of the list must be furnished to the Michigan Department of Treasury Disclosure Officer and Contract Administrator.

XI. Effective Date

These Safeguard requirements will be reviewed whenever the Contract modifications include specifications or processes that affect tax data.



REVISED

Attachment A

Reset Form

Michigan Department of Treasury
3337 (Rev. 10-03)

Vendor, Contractor or Subcontractor Confidentiality Agreement

The Revenue Act, Section 28(1)f, 1941 PA 122, MCL 205.28(1)(f), makes all information gained in administering taxes confidential, except as otherwise provided in the Act. The Act holds a vendor, contractor or subcontractor and their employees who sell a product or provide a service to the Michigan Department of Treasury to the strict confidentiality provisions of the Act. Confidential tax information includes, but is not limited to, information obtained in connection with administration of a tax or information or parameters that would enable a person to ascertain the audit selection or processing criteria of the Michigan Department of Treasury for a tax administered by the department.

INSTRUCTIONS: Read this entire form before you sign it. If you do not complete this agreement, you will be denied access to Michigan Department of Treasury and federal tax information. After you sign and date this form, keep a copy for your records. Send the original to: Michigan Department of Treasury, Office of Policy Communications and Disclosure, Disclosure Officer, 430 W. Allegan, Lansing, MI 48922.

Company Name and Address (Street or RR#, City, State, Zip Code) Morley Companies, Inc. One Morley Plaza Saginaw, MI 48603	Official or Employee Name Christopher J. Furlo Employee Identification Number or Driver's License Number 1149
Name of State of Michigan Agency Department of Management & Budget	Sub-Contractor's Name if Product/Service Furnished to Contractor N/A
Describe here or in a separate attachment the product or service being provided to the State of Michigan Agency. Principal Residence Exemption (PRE) Data Collection & Reporting Services	

Confidentiality Provisions. It is illegal to reveal or inspect (browse), except as authorized:

- All tax return information obtained in connection with the administration of a tax. This includes information from a tax return or audit and any information about the selection of a return for audit, assessment or collection, or parameters or tolerances for processing returns.
- All Michigan Department of Treasury or federal tax returns or tax return information made available, including information marked "Official Use Only". Tax returns or tax return information shall not be divulged or made known in any manner to any person except as may be necessary for the performance of official duties. Access to Treasury or federal tax information, in paper or electronic form, is allowed on a **need-to-know** basis only. Disclosure of return information to other employees of your department, agency, division or office, must meet **need-to-know** criteria and be required to perform official duties.
- Confidential information shall not be disclosed by a department employee to confirm information made public by another party or source which is part of any public record. 1999 AC 205.1003(3)

Penalty. Violating confidentiality laws is a felony, with penalties as described:

Michigan Penalties

The Michigan Revenue Act, 1941 PA 122, MCL 205.28(2), imposes criminal penalties of up to \$5,000 and/or imprisonment for five years, plus costs of prosecution, if it is found that an individual has made an unauthorized inspection or disclosure of a tax return or tax return information or divulged audit selection criteria or processing parameters. Inspection (browsing) is defined as examining a return or return information without authorization and without a need to know the information to perform official duties.

Any person who violates **any** other provision of the Revenue Act, 1941 PA 122, MCL 205.1, et. seq., or any statute administered under the Revenue Act, will be subject to a misdemeanor conviction with a fine of up to \$1,000.00, or imprisonment for up to one year, or both. MCL 205.27(4).

Federal Penalties

The Internal Revenue Code (IRC), Section 7213, 26 USC 7213, imposes a felony penalty up to \$5,000 and/or imprisonment of not more than five years, plus cost of prosecution, for willful **disclosure** to any person of federal tax return and tax return information obtained by the Michigan Department of Treasury under its agreement with the IRS. In addition to the above penalties, IRC Section 7213A, 26 USC 7213A, imposes a fine up to \$1,000 and/or imprisonment up to one year, plus cost of the action, for unauthorized **inspection (browsing)** of federal tax return or tax return information.

The IRS amended IRC Section 7431, 26 USC 7431, to provide an expanded cause of action for civil damages for unauthorized inspections, as well as disclosures of returns or return information. The IRS must notify the affected taxpayer if a federal or state employee or contractor is criminally charged under either of the above IRC sections. The injured taxpayer may bring civil action within two years against the United States and against the employee or contractor. The penalty is \$1,000 or actual damages sustained by the taxpayer, plus cost of the action and attorney's fees.

CERTIFICATION		
I acknowledge that I have read this Agreement, which is intended to help me understand applicable Michigan and Federal law related to the protection of confidential information. I understand that failure to comply with applicable law, including the laws referenced in this Agreement, may subject a violator to criminal and civil penalties.		
Print name of person signing this agreement Christopher J. Furlo	Signature of person named above	Date signed
WITNESS		
Print name of witness Gina M. Walker	Signature of witness	Date signed